

Shannon Carter #70773

P.O. Box 7007

Carson City N.V. 89702

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OCT 13 2020	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY:	DEPUTY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Shannon Carter
Plaintiff,

V.

Bean, et al.,
Defendants,

Case No. 2:17-cv-01628-RFB-EJY

DECLARATION IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

Shannon Carter states:

1. I am the Plaintiff in the above - entitled case. I make this
declaration in opposition to defendants' motion for summary judgment on my claims
concerning Eighth amendment deliberate indifference to serious medical needs,
Fourteenth amendment substantive Due Process and First amendment retaliation
claims against me by defendants Bean, Biter, Nash, Williams, Aranda, Buencamino,
Stewart, Howell and Dzurenda.

1 2. On February 20, 2016 I First informed the defendants
2 of my dental needs via, medical Kites~~a~~ responded to by defendant
3 S. Bean signed simply SB, stating: "APPT. SCHED YOU'LL BE NOTIFIED OF
4 APPOINTMENT" This fact is supported by exhibit #1 (medical Kite dated
5 2.20.16)

6 3. Over the next two months I informed the defendants
7 Multiple times through Kites that my medical/Dental condition
8 was turning for the worse extreme Pain I.E. Swollen Jaw,
9 Chipping teeth, causing my Blood Pressure to rise, Pain (9) out of
10 (10) unable to eat or sleep please Help. This fact is Supported
11 by exhibit #2 medical Kites dated 3.5.16, 3.30.16, 4.8.16,
12 and 4.17.16

13 4. At less two^{of} months Kites where directly addressed by
14 defendant S. Bean signed SB, as seen in exhibit #1 & 2
15 whos Job dutys consist of Scheduling patients according to the needs
16 of the institution in concert with the priorities of the applicable
17 administration Regulations as seen in exhibit #3 (Employee work
18 Performance standard form, Job element #1 Dental assisting)

19

20

1 5. Ultimately, despite multiple Kites informing the
 2 defendants of my pain and need of treatment as seen in exhibit #1 & 2
 3 I was not scheduled to be seen by a dentist by defendant Bean
 4 for (61) days after first being informed of Plaintiffs dental needs.

5 6. On 4-21-16 I was finally seen by the defendants ex-rays
 6 where taken and the defendants determined I did indeed have
 7 a serious medical need I.E. three teeth that warranted treatment
 8 teeth #18, #19 and #31 needed fillings. This fact is supported by exhibit #
 9 4 (Dental chart line dated 4-21-16)

10 7. Despite the defendants knowledge of my pain and serious
 11 medical need I was not treated on 4-21-16 even though I
 12 had been waiting for over two months at this time. This fact
 13 is also supported by exhibit #4

14 8. Over the next several months I was in excruciating pain
 15 I informed defendants Stewart, Buenacama, Aranas, Howell and Williams
 16 directly via, Grievances of dentals Deliberate and Indifference to my
 17 serious medical needs by dentals unwarranted delays of medical treatment
 18 and my need to be treated for dental issues determined by dental on 4-21-16
 19 This fact is supported by exhibit #5 (Informal, first and second level Grievance)

20 9. Defendants Stewart, Buenacama, Aranas, Howell and Williams
 21 as Grievance responders, Grievance coordinators and Grievance receivers, aware
 22 of Plaintiff pain and serious medical need fail and or refused to properly

1 investigate and ensure I received timely and appropriate medical
2 attention despite Plaintiff directly pleading to them for help instead
3 ~~XXXXXX~~ allowed to continue, a policy in which unconstitutional
4 Practices occurred. defendant Stewart had knowledge on 6/15/16 as
5 informal grievance responder "Yet" fail to address, defendant J. Howell had
6 knowledge on 6-8-16 as grievance coordinator who approved Informal
7 grievance "Yet" fail to address, defendant A. Buencamino had knowledge
8 8/1/16 as first level grievance responder "Yet" fail to address, defendant
9 Aranas had knowledge on 12/14/16 as second level grievance responder
10 "Yet" again fail to address, defendant Williams had knowledge on 1-10-17
11 as (H.D.S.P) Warden was sent Informal first And Second level grievance
12 to him by defendant Aranas stamped received 1-10-17 These facts
13 are supported by Exhibit # 5

14 10. On or about 12-5-16 Plaintiff filed a lawsuit
15 in state court filed 12-8-16, A-16-747779-C Specifically, naming
16 defendant Dzurenda along with other defendants again informing the
17 defendants ~~XXXXXX~~ directly of deliberate indifference to my serious
18 medical needs. This fact is supported by exhibit # 6 (Complaint
19 A-16-747779-C)

20

21

11. Defendant Dzurenda was directly informed
 of Plaintiffs' issues with (H.D.S.P.) dental deliberate indifference
 to Plaintiffs serious medical need on 4-27-2017 via summons
 and complaint yet fail and or refused to investigate and ensure
 any outstanding dental issues of Plaintiff was addressed timely
 and appropriately by (H.D.S.P.) dental as (N.D.O.C.) Director Instead
 allowed to continue, a policy in which unconstitutional Practices
 occurred to support this fact see Exhibit #7 (Defendants motion
 to dismiss lines 25-27 Page 8 of 9)

12. Defendant Dzurenda was served Amended complaint
 case No. A-16-747779-C which informed him of my Pain and need
 of immediate medical attention pertaining to my teeth to
 support this fact see Exhibit #8 (Amended complaint dated filed
 2-22-17)

13. On 2-1-17 I was scheduled treatment for dental
 issues determined on 4-21-16 warranted treatment by the
 defendants upon arrival to dental despite multiple Kites, grievances,
 and a 1983 civil suit informing the defendants of my Pain and
 need of treatment defendant Bitar asked me why I was
 there before I could answer defendant Bean stated that's
 the cry baby who filed a lawsuit on me.

1 14. Bitar then said they don't treat inmates who
2 try to file lawsuits against them.

3 15. I told Bitar I was in a lot of pain and been
4 unable to eat and sleep regularly for months.

5 16. Bean then stated her husband was a LT and that
6 I didn't know what Pain was yet.

7 17. I told Dr. Bitar that Dr. Mangapit told me
8 I had an infected tooth and something that needed treatment. I
9 forgot what Mangapit called it.

10 18. I then asked Bitar directly if he was going
11 to treat me? Bitar responded by asking me if I was going
12 to drop my lawsuit? I told Bitar No! Bitar said then
13 No I am not treating you.

14 19. Defendant Bean smiled then stated "Go back
15 to your unit when you can't take the pain you'll be back
16 I was then escorted out of medical.

17 20. I filed a grievance again informing the defendants
18 of the retaliation and denial of medical treatment on 2-1-17
19 and directly informing them this was an on going constitutional
20 violation I was still in extreme pain and my need of treatment
21 since 4-21-16. This fact was supported by exhibit # 9 (Improper grievance memo)

22

1 21. Defendant Nash improperly rejected my grievance
2 refused and or fail to inform dental of my need of treatment further
3 Subjecting me to unnecessary wanton infliction of Pain see exhibit #9
4 This also denied Plaintiff any and ~~all~~ all abilitys to exhaust any claims
5 relating to 2:17-cv-01628-RFB-EJY.

6 22. I then file my federal lawsuit not knowing what to do.
7 State court was not helping me.

8 23. I then learn of a TRO motion I filed one
9 in state court trying to get very much needed dental treatment
10 see exhibit #10 (motion requesting TRO hearing)

11 24. Again directly informing the defendants of my Pain and
12 need of medical treatment. Ultimately a TRO hearing pertaining to
13 the deliberate and indifference to my serious medical needs was held.

14 25. At that hearing the defendants argued 1# They had no
15 idea why I was at dental on 2.1.17 and 2# I never requested medical
16 treatment only names for a lawsuit.

17 26. Despite my attempts to explain to the state court (H.D.S.P.)
18 Policies which requires all inmates to be escorted to dental and only inmates
19 on dental sick call list to be treated for requested or recommended treatment
20 could arrive to dental. Meaning defendants Bitar and Bean who had been
21 working at HDSP dental for over (9) years at that time New I was
22 only there for requested or recommend treatment. Moreover the multiple Kiles
23 Grievances and 1983 civil suit filed before 2.1.17 along with my dental
24 chart made this arguement absurd.

1 27. The non-treatment by Bitar and Bean even if
 2 you take what they said as true on 2-1-17 mandated to be
 3 documented on a refusal form if I was escorted to dental
 4 and not treated for what ever reason on a scheduled appointment
 5 as seen in exhibit #11 (Refusal form) This never occurred further Supporting
 6 the fact Plaintiff was denied dental treatment on 2-1-17

7 28. By 2-1-17 I had file multiple Kites, grievances, and my
 8 medical chart clearly expressed my dental needs as see in the exhibits
 9 Attached.

10 29. But even more alarming is defendant Beans
 11 Declaration stating Plaintiff scheduled for treatment by Dr. Mangapit
 12 on 2-1-17 "Yet" Dr Bitar Nor herself new why I was there
 13 See exhibit #12 (S. Bean declaration dated June 30, 2017)

14 30. Even more alarming defendant Beans declaration
 15 dated July 28, 2020 Number 14 Paragraphs states: "As of February 1, 2017
 16 I was unaware Mr Carter had filed a lawsuit against me, or had attempt
 17 to serve me in relation to any lawsuit in which I was a named defendant."
 18 See exhibit #13 (S. Bean declaration dated July 28, 2020 Paragraphs 14)
 19 Affidavit of service stated S. Bean was served 1/31/2017 at 1:30 PM
 20 Day before my scheduled appointment on 2-1-17 as seen in exhibit #14
 21 (Affidavit of service S. Bean)

22 31. Ultimately State court did not understand (H.D.S.P) Rules
 23 and believed that now that the defendant new of my Pain and need of treatment
 24 I would be treated once back at HDSP Despite me informing the court I would

1 not be treated by the defendants to support this fact

2 see exhibit # 15 (State court TRO Trans)

3 32. Unfortunately my statement that I would not

4 be treated ~~was~~ ^{was} true. A few days after the state court TRO

5 hearing and still not treated by dental on or about July 17, 2017

6 I personally informed William of my need of dental treatment

7 Via Kite see exhibit # 16 (Kite to warden)

8 33 A few weeks later on the yard I seen defendant

9 Williams I informed him that I had still not been seen by dental

10 Williams stated you must of really pissed them off and walked away

11 Williams was also with Howell who ~~was~~ just smiled.

12 34. Then filed a TRO To this honorable court

13 thank God this court held a TRO hearing, After this court

14 reviewed the evidence on the face of the record the court

15 order the defendants to finely treat me within 14 days

16 as seen in exhibit # 17 (TRO Federal mins)

17 35. finely after 2 1/2 years of being deliberately and

18 Intentionally Subjected to unnecessary wanton infliction of pain by

19 the defendants Via, Swelling jaw, Bleeding Gums, Chipping teeth, extreme

20 Painful headaches, High Blood pressure, unable to eat and Sleep properly

1 two attempts of Suicide due to the long lasting pain I was treated
2 for my serious medical need.

3 36. Unfortunately Due to the delays and or refusals
4 of dental treatment 2 teeth could no longer be filled and had to
5 be extracted as seen in the report sent to this court under seal
6 by the defendants after TRO hearing.

7 37. The foregoing factual allegations create a
8 genuine issue of material fact and will, if proved at trial, support
9 a judgment in my favor, as explained in the brief submitted
10 with this declaration.

11 Pursuant to 28 U.S.C. 1746, I declare under penalty
12 of perjury that the foregoing is true and correct.

13
14 Dated 9.23.2020

15 *Shannon Carter*

16 Shannon Carter #
17 P.O. Box 7007
Carson City N.V. 89702

CERTIFICATE OF SERVICE

I, Shannon Carter, hereby certify, pursuant to
 NRCP 5(b), that on this 28th day of September, 2020,
 I mailed a true and correct copy of the foregoing "opposition to Defendants
motion for summary judgment, Brief in opposition & statement of disputed factual issues
also a motion for appointment of counsel" by placing it in the
 hands of the warm springs correctional center law library
 supervisor, First-class Postage, fully paid, and addressed as
 follows:

Clerk U.S. District Court
333 Las Vegas Blvd, So-Rm 1334
Las Vegas, NV. 89101

Attorney General office
Wade J. VanSickle
555 E. Washington Avenue, Suite 3900
Las Vegas Nevada 89101-1068

DATED THIS 28th DAY OF September, 2020.

Shannon Carter

Warm Springs correctional Center
 P.O. Box 7007
 Carson City, Nevada 89702

EXHIBIT # 1

EXHIBIT # 1

SIGNATURE: Shannon CarterID# 70773

(Also print name and ID# at bottom of form where indicated).

Institution: H.D.S.P.Date submitted: 2/20/16Unit/House: 10C27BMedical: ☐Dental: ☒Mental Health: ☐Nursing: ☐

Other: _____

Reason for request: (Describe below)

I have been in prison since 2001 I have been to the dentist (1) time I am feeling pain in some of my back teeth I would like to have them cleaned and filled
Thank you

DO NOT WRITE IN AREA BELOW

Response to request:

APPT. SCHED.

YOU'LL BE NOTIFIED THE
 DAY OF APPOINTMENT

☐

Appointment Schedule for: _____

Rescheduled for: _____

☐

No visit necessary

☐

No Show for Appointment

☐

Refused to be seen. DOC 2523-Release of Liability signed

PRESCRIPTIONS

☐

KOP

☐

NON-KOP

☐

Order Date: _____

PLAN

☐

Follow-up appointment _____

☐

Return if needed

☐

No follow-up required

Signature/Title of Provider

Date

NEVADA DEPARTMENT OF CORRECTIONS

MEDICAL KITE and/or
 SERVICE REPORT

NAME: Carter Shannon

Last

First

MI

ID#

70773

EXHIBIT # 2

EXHIBIT # 2

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
Shannon Carter	70773	10 C 27	3/5/16

4.) REQUEST FORM TO: (CHECK BOX)

<input type="checkbox"/> CASEWORKER	<input type="checkbox"/> MEDICAL	<input type="checkbox"/> MENTAL HEALTH	<input type="checkbox"/> CANTEEN
<input type="checkbox"/> EDUCATION	<input type="checkbox"/> VISITING	<input type="checkbox"/> LAW LIBRARY	<input checked="" type="checkbox"/> DENTAL
<input type="checkbox"/> LAUNDRY	<input type="checkbox"/> PROPERTY ROOM	<input type="checkbox"/> SHIFT COMMAND	<input type="checkbox"/> OTHER

5.) NAME OF INDIVIDUAL TO CONTACT:

6.) REQUEST: (PRINT BELOW) *I have a hole in my molar food and debris gets in the hole causing continuing Pain and Some times wakes me up from my Sleep. I am requesting to have it filled not Pulled can you Please appoint me to come up as soon as Possible*

Thank you

7.) INMATE SIGNATURE	<i>Shannon Carter</i>	DOC #	70773
8.) RECEIVING STAFF SIGNATURE	<i>[Signature]</i>	DATE	3/5/16

9.) RESPONSE TO INMATE

APPT. SCHED
YOU'LL BE NOTIFIED THE
DAY OF APPOINTMENT

10.) RESPONDING STAFF SIGNATURE *[Signature]* DATE *3/11/16*

DOC - 3012 (REV. 7/01)

INMATE REQUEST FORM

1.) INMATE NAME <u>Shannon Carter</u>	DOC #. <u>70773</u>	2.) HOUSING UNIT <u>10 C 27</u>	3.) DATE <u>3/30/16</u>
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4.) REQUEST FORM TO: (CHECK BOX)

<input type="checkbox"/> CASEWORKER	<input type="checkbox"/> MEDICAL	<input type="checkbox"/> MENTAL HEALTH	<input type="checkbox"/> CANTEEN
<input type="checkbox"/> EDUCATION	<input type="checkbox"/> VISITING	<input type="checkbox"/> LAW LIBRARY	<input checked="" type="checkbox"/> DENTAL
<input type="checkbox"/> LAUNDRY	<input type="checkbox"/> PROPERTY ROOM	<input type="checkbox"/> SHIFT COMMAND	<input type="checkbox"/> OTHER _____

5.) NAME OF INDIVIDUAL TO CONTACT: Dental

6.) REQUEST: (PRINT BELOW) I first wrote a kite 2/20/16 about the Pain I am having in my teeth I then wrote a kite again 3/5/16 I am now writing a kite again on 3/31/16 my gums are now bleeding and swelling I havent eat in 3 days havent slept in 4 the Pain is a (9) out of (10) I believe its my back molars have holes in them foods getting in there need to be filled. Again cant sleep or eat very Painful I need to be seen ~~before~~ is causing my blood pressur to be constittly elevated due to lack of sleep and stress

7.) INMATE SIGNATURE Shannon Carter DOC # 70773
 8.) RECEIVING STAFF SIGNATURE [Signature] DATE 3/30/16

9.) RESPONSE TO INMATE

Referred to dental

Have you seen a sick call nurse until we can get you in?

APR 01 2016

APPT. SCHED. 4/14/16 C111

YOU'LL BE NOTIFIED THE
DAY OF APPOINTMENT

RESPONDING STAFF SIGNATURE _____ DATE _____

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
Shannon Carter	70773	10 ^c 27	4/8/16

4.) REQUEST FORM TO: (CHECK BOX)

<input type="checkbox"/> CASEWORKER	<input type="checkbox"/> MEDICAL	<input type="checkbox"/> MENTAL HEALTH	<input type="checkbox"/> CANTEEN
<input type="checkbox"/> EDUCATION	<input type="checkbox"/> VISITING	<input type="checkbox"/> LAW LIBRARY	<input checked="" type="checkbox"/> DENTAL
<input type="checkbox"/> LAUNDRY	<input type="checkbox"/> PROPERTY ROOM	<input type="checkbox"/> SHIFT COMMAND	<input type="checkbox"/> OTHER _____

5.) NAME OF INDIVIDUAL TO CONTACT: "Dental"

6.) REQUEST: (PRINT BELOW) I have been requesting to ~~see~~^{be} seen by Dental since 1/20/16 my condition has ~~turned~~ for the worst my gums are swelling and bleeding lead is getting in holes in my back teeth causing great Pain I haven't been able to eat or sleep for weeks now this is causing my Blood Pressure to be Very High I received a kite back from the dentist stating "refused dental" which is not true I have not been contacted anyone to refuse dental the kite also asked if I ~~talked~~ to a nurse which I have ~~talked~~ times and she stated my blood Pressure is Very high so I need to write a Kite which I am I need to be seen to have my teeth filled pain is (9) out of (10) can't eat or sleep Blood Pressure Very High!

7.) INMATE SIGNATURE Shannon Carter DOC # 70773

8.) RECEIVING STAFF SIGNATURE _____ DATE _____

9.) RESPONSE TO INMATE

If a nurse is telling you your blood pressure is high sayit she provide an antibiotic +/or a pain pack until we can get you in?

4/13/16 CM

APPT. SCHED:
YOU'LL BE NOTIFIED THE DAY OF APPOINTMENT

10.) RESPONDING STAFF SIGNATURE _____ DATE _____

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
Shannon Carter	70773	10 C 27	4/17/16

4.) REQUEST FORM TO (CHECK BOX)

<input type="checkbox"/> CASEWORKER	<input type="checkbox"/> MEDICAL	<input type="checkbox"/> MENTAL HEALTH	<input type="checkbox"/> CANTEEN
<input type="checkbox"/> EDUCATION	<input type="checkbox"/> VISITING	<input type="checkbox"/> LAW LIBRARY	<input checked="" type="checkbox"/> DENTAL
<input type="checkbox"/> LAUNDRY	<input type="checkbox"/> PROPERTY ROOM	<input type="checkbox"/> SHIFT COMMAND	<input type="checkbox"/> OTHER

5.) NAME OF INDIVIDUAL TO CONTACT: Dental

6.) REQUEST (PRINT BELOW) I ~~had~~ First wrote a kite for dental 2/20/16 explaining my pain in my back teeth due to holes in my molars since then I have wrote several more kites due to my condition decreasing I have not been able to sleep or eat due to this pain which now is effecting my blood pressure I was seen by the Nites to have my blood pressure checked she stated it was Very High I told her my teeth have been causing me pain haven't ate or slept she stated write a kite to see the doctor which I did to no avail I received my blood pressure refill from Bill call nurse I explained to her my pain in my teeth and that I haven't ate or slept she told me she don't deal with "Dental" write a kite now I don't know what the procedures are for serious medical needs are but I need to be seen now I can't eat or sleep pain is althout of control effecting my blood pressure

7.) INMATE SIGNATURE Shannon Carter DOC # 70773

8.) RECEIVING STAFF SIGNATURE [Signature] DATE 4/25/16

9.) RESPONSE TO INMATE

10.) RESPONDING STAFF SIGNATURE [Signature]

DATE 4/25/16

EXHIBIT # 3

EXHIBIT # 3



**DIVISION OF HUMAN RESOURCE
MANAGEMENT
EMPLOYEE WORK PERFORMANCE
STANDARDS FORM**

Supervisors are responsible for establishing the initial standards, but standards must be reviewed annually and amended when appropriate. The employee must be given the opportunity to provide comment when the standards are revised (NAC 284.468).

Employee Name:		Last	First	MI	Employee ID #
Class Title: Dental Assistant II (10.263)					Date Standards Est/Rev:
Department/Division: NDOC/Medical/ HDSP					
Agency # (3 digits):		Home Org # (4 digits):		Position Control #:	
I have read and understand the work performance standards for this position. I understand these standards may be modified after discussion with my immediate supervisor and with the concurrence of the appointing authority.					
Employee Signature:				Date:	
Supervisor Title & Signature:				Date:	
Reviewing Officer Title & Signature:				Date:	
Appointing Authority Title & Signature:				Date:	
Job Elements (Defined as principal assignments, goals, responsibilities and/or related factors.)			*Weighted Value	Performance Standards	
Job Element #1: Dental Assisting			10%		
<ul style="list-style-type: none"> Prepare and arrange dental instruments, materials and equipment appropriate for the planned procedure(s). Use four-handed dental assisting techniques. Clean and sterilize dental instruments according to current CDC standards. Clean and disinfect all dental operatory surfaces according to current CDC standards. Pour and trim models. Schedule patients according to the needs of the institution in concert with the priorities of the applicable Administration Regulations. 				<ul style="list-style-type: none"> No exceptions Extensive knowledge of specialty procedures is above standard. Extensive knowledge of prosthetic lab procedures is above standard. Implementation of current infection control standards according to the latest CDC standards is mandatory with no exceptions. 	
Job Element #2: Expanded Duties			10%		
<ul style="list-style-type: none"> As stipulated by NRS 631, extended duties include: <ol style="list-style-type: none"> Remove sutures. Apply/remove periodontal pack. Take impressions for study models and of opposing arch. 				<ul style="list-style-type: none"> Some experience with expanded duties is standard. Extensive experience with expanded duties is above standard. 	

Job Element #3: X-Rays	10%	
<ul style="list-style-type: none"> Expose intra-oral and extra-oral radiographs as directed by the dentist. Process, mount and label radiographs. 		<ul style="list-style-type: none"> Assisting the dentist in the exposure of radiographs is standard. Certification from the Board of Dental Examiners is above standard.
Job Element #4: Patient Care		
<ul style="list-style-type: none"> Receive and seat patient. Clarify purpose of visit with patient. Update patient medical history Document any other pertinent information. Explain and clarify basic information regarding treatment plan. Explain the patient's responsibilities for continuing care. Secure patient signature on informed consent forms for special procedures. 		<ul style="list-style-type: none"> No exceptions. Compassionate and respectful treatment is standard. Ability to translate common dental related questions and instructions is above standard.
Job Element #5: OSHA and Safety	10%	
<ul style="list-style-type: none"> Demonstrate knowledge of Bloodborne Pathogens Standard. Practice barrier techniques and universal precautions. Handle and dispose of sharps and hazard materials according to established State and federal OSHA standards. Observe safe practices at all times. Observe terms of safety of self, others, and care of Department property, equipment, and vehicles. Follow Department accident reporting procedures. 		<ul style="list-style-type: none"> No exceptions. Intentional non-compliance with OSHA standards is below standard.
Job Element #6: Patient Instruction	10%	
<ul style="list-style-type: none"> Provide basic oral hygiene instruction. Demonstrate proper tooth brushing and flossing methods. Discuss the importance of diet. Provide patient appropriate pre and post-operative instructions. 		<ul style="list-style-type: none"> Distribution of oral hygiene instruction materials is standard. Demonstration of oral hygiene techniques is above standard.
Job Element #7: Supplies	10%	
<ul style="list-style-type: none"> Maintain medical/dental supplies. Assist in the inventory process. Notify appropriate staff when supplies are needed. Receive and store supplies and materials. Maintain an accurate tool control inventory in accordance with the security practices of the institution. Demonstrate knowledge of current procedures in the procurement of supplies and services. 		<ul style="list-style-type: none"> No exceptions Maintenance of adequate supplies of critical materials is standard. Ability to identify and implement cost saving buying techniques is above standard. Non-compliance with current procurement procedures is below standard.

Job Element #8: Customer Service/Communication and PREA	10%	
<ul style="list-style-type: none"> • Provide quality and quantity of information and service to co-workers and patients. • Answer telephones; greet patients; answer general questions; refer callers/patients to appropriate personnel. • Maintain and project an approachable, open-minded attitude and respect confidentiality to ensure open, two-way communication. • Demonstrate knowledge of HIPPA standards. • Ensure compliance of PREA regulations. • Maintain current status on PREA training and updates. 		<ul style="list-style-type: none"> • Professional telephone demeanor is standard • Non-compliance with HIPPA standards is below standard; No exceptions.
Job Element #9: Work Ethic	10%	
<ul style="list-style-type: none"> • Ability to prioritize tasks, estimate time frames, meet deadlines, plan and use available resources and coordinate work assignments with others. • Maintain and possess proficiency with computer programs necessary to perform requirements of position. 		<ul style="list-style-type: none"> • Adequate organizational skills is considered standard. • Exceptional independent abilities is considered above standard.
Job Element #10: Professionalism	10%	
<ul style="list-style-type: none"> • Follow NDOC's Personnel Code of Ethics outlined in AR339. • Arrive to work on time, do not waste time or abuse sick leave. • Display a professional demeanor at all times when interacting with staff and inmates. • Be courteous and considerate. • Avoid critical and argumentative statements. • Observe the Chain-of-Command in all interactions and correspondence. • Cooperate with and maintain a good relationship with operations and program staff. • Provide quality and quantity of information and service to co-workers and external customers. • Answer general questions; refer callers/visitors to appropriate personnel. • Maintain and project an approachable, open-minded attitude and respect confidentiality to ensure open, two-way communication. 		<ul style="list-style-type: none"> • No exceptions. • Participation in institutional committees is above standard.

*If a weighted value is not designated, each job element has an equal weight.
 Distribution: Original to Agency; Copy to Employee; Copy to Supervisor

NPD-14 Est. 1/03
 Revised 3/12

EXHIBIT # 4

EXHIBIT # 4

MEDICAL ALERTS

DDP 2562 (3/95)

EXHIBIT # 5

EXHIBIT # 5



State of Nevada
Department of Corrections

10A

INMATE GRIEVANCE REPORT

ISSUE ID# 20063023297

ISSUE DATE: 05/10/2016

INMATE NAME CARTER, SHANNON D		NDOC ID 70773	TRANSACTION TYPE RTRN_INF		ASSIGNED TO LSTEWART
LEVEL IF	TRANSACTION DATE 06/07/2016	DAYS LEFT 5	FINDING Denied	USER ID RZANER	STATUS A
INMATE COMPLAINT					
OFFICIAL RESPONSE THE LAST TIME YOU SAW DENTAL WAS 4/29/16. IT WAS NOTED YOU NEED FILLINGS. BECAUSE OF THE MODIFIED LOCKDOWN ON UNIT 10 THE LIST OF IM FROM UNIT 10 HAS GROWN. YOU ARE ON THE DENTAL LIST AND WILL BE SEEN AT THE NEXT AVAILABLE APPOINTMENT.					

GRIEVANCE RESPONDER

Report Name: NVRIGR
Reference Name: NOTIS-RPT-OR-0217.2
Run Date: JUN-07-16 10:54 AM

Page 1 of 2

Log Number

20063023297

NEVADA DEPARTMENT OF CORRECTIONS
INFORMAL GRIEVANCENAME: Shannon Carter I.D. NUMBER: 70773INSTITUTION: H.D.S.P. UNIT: 10

GRIEVANT'S STATEMENT: H.D.S.P. Dental Program and/or Policy is inadequate and
Deliberate indifference to my Serious Medical needs I first informed "Dental" to
the Point in my teeth ON 2-20-16 I was told I would be scheduled ON 3-5-16 I
informed "Dental" IN some detail of my issue and my back molars had and debris
gets in the holes causing Pain and wakes me from my sleep and I need to be

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: Shannon Carter DATE: 5/2/16 TIME: 6 PMGRIEVANCE COORDINATOR SIGNATURE: J. D. [Signature] DATE: 5/9/16 TIME: 8

GRIEVANCE RESPONSE: _____

CASEWORKER SIGNATURE: [Signature] CNIT DATE: 6/15/16GRIEVANCE UPHELD ☐ GRIEVANCE DENIED ☒ ISSUE NOT GRIEVABLE PER AR 740GRIEVANCE COORDINATOR APPROVAL: [Signature] DATE: 6/8/16INMATE AGREES ☒ INMATE DISAGREES ☐INMATE SIGNATURE: Shannon Carter DATE: 6-22-16FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST LEVEL GRIEVANCE MAY
BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original: _____ To inmate when complete, or attached to formal grievance
 Canary: _____ To Grievance Coordinator
 Pink: _____ Inmate's receipt when formal grievance filed
 Gold: _____ Inmate's initial receipt



State of Nevada
Department of Corrections

INMATE GRIEVANCE REPORT

12FBB

ISSUE ID# 20063023297

ISSUE DATE: 05/10/2016

INMATE NAME		NDOC ID	TRANSACTION TYPE		ASSIGNED TO	
CARTER, SHANNON D		70773	RTRN_L1		ABUENCAMINO	
LEVEL	TRANSACTION DATE	DAYS LEFT	FINDING	USER ID	STATUS	
1	07/26/2016	4	Denied	HSAMS	A	
INMATE COMPLAINT						
OFFICIAL RESPONSE						
Based on your medical records, on 6/16/16, you were evaluated, examined and given the necessary dental treatment (fillings) by the dentist. Several x-rays were performed and you were advised if any other symptoms develop, submit a kts and you will be scheduled accordingly.						
Grievance Denied.						

Tito Buencamino DON SI 8/1/16
GRIEVANCE RESPONDER

[Signature]

Report Name: NVRIGR
Reference Name: NOTIS-RPT-OR-0217.2
Run Date: JUL-26-16 03:36 PM

Page 1 of 4

Log Number 20063023297NEVADA DEPARTMENT OF CORRECTIONS
FIRST LEVEL GRIEVANCENAME: Shannon Carter I.D. NUMBER: 70773INSTITUTION: H.D.S.P. UNIT: 12-F-13I REQUEST THE REVIEW OF THE GRIEVANCE, LOG NUMBER 20063023297, IN A FORMAL MANNER. THE ORIGINAL COPY OF MY GRIEVANCE AND ALL SUPPORTING DOCUMENTATION IS ATTACHED FOR REVIEW.

SWORN DECLARATION UNDER PENALTY OF PERJURY:

INMATE SIGNATURE: Shannon Carter DATE: 6-24-16WHY DISAGREE: I informed dental to my serious medical need in February medical lockdown was in April there was and is "no" reason it should have taken 147 days to be treated for a condition that was determined by a dentist needed treatment. This practice and or Police is Deliberate and Indifferent to my serious medical needs and must be addressed appropriately.GRIEVANCE COORDINATOR SIGNATURE: J. Schell DATE: 6-27-16FIRST LEVEL RESPONSE: SEE ATTACHED

RECEIVED

HDCP

GRIEVANCE UPHELD _____ GRIEVANCE DENIED _____ ISSUE NOT GRIEVABLE PER AR 740 _____

WARDEN'S SIGNATURE: W. B. Williams TITLE: Warden DATE: 8/1/16GRIEVANCE COORDINATOR SIGNATURE: J. Schell DATE: 7-26-16INMATE AGREES ☒ INMATE DISAGREES ☐INMATE SIGNATURE: Shannon Carter DATE: 8-5-16

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A SECOND LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original: To Inmate when complete, or attached to formal grievance
 Canary: To Grievance Coordinator
 Pink: Inmate's receipt when formal grievance filed
 Gold: Inmate's initial receipt



8C/1.4A
COA

**State of Nevada
Department of Corrections**

INMATE GRIEVANCE REPORT

ISSUE ID# 20063023297

ISSUE DATE: 05/10/2016

INMATE NAME	NDOC ID	TRANSACTION TYPE	ASSIGNED TO
CARTER, SHANNON D	70773	RTRN_L2	RARATIAS
LEVEL	TRANSACTION DATE	DAYS LEFT	FINDING
2	11/18/2016		Denied
			USER ID
			VAUSTIN
			STATUS
			A
INMATE COMPLAINT			
OFFICIAL RESPONSE			
<p>Mr. Carter, Based on your medical records, on 4/4/16, you were scheduled to see the dentist but unfortunately you were not seen because your unit was on lock down on that day for safety and security reasons. On 4/29/16, you had a dental consult. You were told that you need fillings on teeth #18, 19 and 31 and pain medications were prescribed. On 6/6/16, filling was done based on the finding that this tooth had the largest cavity. X-rays were taken. Just like any other Department, inmate services and appointments will be provided using the priority system established by the institution dentist per AR 631. There other inmates waiting for their turn to be seen. A dentist may extract several teeth, or fill multiple teeth, or extract one tooth or fill one tooth depending on the case and the situation and time needed and available. You are advised to submit a kit about your dental complaint and service will be rendered appropriately and accordingly. Grievance denied</p>			

Shannon D. Carter

R. R. Williams, MD
R. R. Williams, MD
Medical Director NDOC

GRIEVANCE RESPONDER

Report Name: NVRIGR
Reference Name: NOTIS-RPT-OR-0217.3
Run Date: NOV-18-16 10:00 AM

DEC 14 2016

JAN 10 2017

Page 5 of 6

WDSW WARDEN

LOG NUMBER: 20063023297NEVADA DEPARTMENT OF CORRECTIONS
SECOND LEVEL GRIEVANCENAME: Shannon CarterI.D. NUMBER: 70773INSTITUTION: H.D.S.P.UNIT: 12-F-13

I REQUEST THE REVIEW OF THE GRIEVANCE, LOG NUMBER 20063023297, ON THE SECOND LEVEL. THE ORIGINAL COPY OF MY GRIEVANCE AND ALL SUPPORTING DOCUMENTATION IS ATTACHED FOR REVIEW.

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: Shannon CarterDATE: 8-9-16

WHY DISAGREE: It take 147 days to be treated for my serious medical needs. upon treatment the dental doctor determined I had 4 more cavities yet refused to treat then told me when I can no longer take the pain put in a kyle I informed him I was in pain and if I put in a kyle they will charge me again when I already here I was informed that I would be put on a dental plan this has not happen please help!

GRIEVANCE COORDINATOR SIGNATURE: [Signature]DATE: 8-10-16

SECOND LEVEL RESPONSE:

RECEIVED

AUG 11 2016

HDSP

GRIEVANCE UPHELD ☒ GRIEVANCE DENIED ☐ ISSUE NOT GRIEVABLE PER AR 740SIGNATURE: [Signature]TITLE: MDDATE: 12-17-16GRIEVANCE COORDINATOR SIGNATURE: [Signature]DATE: 12-17-16INMATE SIGNATURE: [Signature]DATE: 12-17-16THIS ENDS THE FORMAL GRIEVANCE PROCESS MD

Original: To Inmate when complete, or attached to formal grievance
Canary: To Grievance Coordinator
Pink: Inmate's receipt when formal grievance filed
Gold: Inmate's initial receipt

RECEIVED

JAN 10 2017

HDSP WARDEN

DOC 3094 (12/01)

EXHIBIT # 6

EXHIBIT # 6

Shannon Carter
Name

P.O. Box 650

Indian Springs NV 89070

70773
Prison Number

FILED

DEC 08 2016

Shannon Carter
CLERK OF COURT

60

DISTRICT COURT
CLARK COUNTY, NEVADA

A-16-74779-C
ICOMP
Inmate Filed - Complaint
4805483



Shannon Carter,
Plaintiff,

vs.

1.) John Doe (H.D.S.P. Dentist),

2.) S. Bruns (Dentist Ass.),

3.) Jane Doe (Dentist Ass.),

The State of Nevada James
Dzurenda Dir. of NDOC,

Defendant(s).

CASE NO.

(To be supplied by the Clerk)

DEPT. NO.

NRS 41.0322 TORT ACTION

CIVIL RIGHTS COMPLAINT

PURSUANT TO

42 U.S.C. § 1983

A. JURISDICTION

- 1) This complaint alleges that the civil rights of Plaintiff,

Shannon Carter

(Print Plaintiff's name)

who presently resides at High Desert State Prison, were

violated by the actions of the below named individuals which
were directed against The State of Nevada ex. rel NDOC Director
Dzurenda

Plaintiff at High Desert State Prison on the following dates
(institution/city where violation occurred)

2/20/16 through 6/16/16

(Count I)

(Count II)

(Count III)

RECEIVED

DEC 05 2016

CLERK OF THE COURT

10

Make a copy of this page to provide the below
information if you are naming more than five (5) defendants

2) Defendant John Doe resides at High Desert State Prison.
(full name of first defendant) (address if first defendant)
and is employed as Dentist. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Deliberate and indeludent to my serious medical need
for debuing treatment for 1117 day causing wadon affliction of Pain and
Damge to teeth via chip teeth sharp edges which cut tounge and effected
Blood Pressure

3) Defendant Jane Doe resides at High Desert State Prison.
(full name of first defendant) (address if first defendant)
and is employed as Medical Director/Designee Dentist ASS. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Deliberate and Indifferent to my Serious medical need
by debuing treatment when knowing I was in pain and couldnt eat or sleep

4) Defendant Jane Doe resides at High Desert State Prison.
(full name of first defendant) (address if first defendant)
and is employed as Medical Director/Designee, Dentist ASS. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Deliberate and indifferent to my serious medical need

5) Defendant _____ resides at _____.
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
____ individual ____ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: _____

6) Defendant _____ resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
_____ individual _____ official capacity. (Check one or both). Explain how this
defendant was acting
under color of law: _____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and
42 U.S.C. § 1983. If you wish to assert jurisdiction under different or
additional statutes, list them below.

28 U.S.C. § 242, NRS 41.0322. . .

B. NATURE OF THE CASE

1) Briefly state the background of your case.

H.D.S.P's Dental Program was Deliberate and Indifferent to my Serious
Medical needs by failing to address infected teeth which was causing Severe Pain, Swelling,
Bleeding, loss of Sleep, ability to eat, High Blood Pressure and ultimately a decrease
in my over all health. Although I informed Dental multiple times
of my health decreasing do to my teeth H.D.S.P Dental took (117) days
to treat my serious medical need. During the (117) days dental refused to
treat my decaying hole in my back teeth I experienced Severe Pain and
had chipped my tooth (3) times damaging the tooth and leaving a Sharp
tip on the tooth which cuts my tongue

8th Amendment Deliberate and Indifferent

C. CAUSE OF ACTION

COUNT I

The following civil rights has been violated: 8th Amendment

Deliberate and Indifferent to my Serious medical needs by Dental at High Desert State Prison

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

- 1.) On 2/20/16 I informed dental at High Desert State Prison via Medical Kite (Here and after) Doc-2500 That I was having Pain in some of my back teeth and would like to be seen.
- 2.) I also informed dental that I had been in Prison Since 2001 and had only been to dental once, in hopes that dental would understand my issue was genuine.
- 3.) On 2/29/16 I received a copy of my Doc-2500 stating Appt. Scheduled by defendant S. Bruns
- 4.) Thereafter, I wrote dental again informing them in more detail of my issue hole in my back molar food gets in causing Pain and loss of Sleep
- 5.) Weeks later I informed dental again that my issue with my teeth was worsening effecting my over all health that I havent eat in (3) days and havent Slept in (4) effecting my Blood Pressure.
- 6.) Weeks later I had still never been seen. By this time my gums were bleeding with Swelling white blisters on my gums
- 7.) I again informed dental and expressed to them it was effecting my blood Pressure.
- 8.) Finally after months of excruciating Pain, loss of Sleep, loss of wieght from the loss of the ability to eat and out of control (Blood Pressure) (61) days from informing dental of my Serious medical need I was Eailed to dental for an examination.

Count (1) continuance

The following civil rights has been violated: 8th amendment

Deliberate and Indifferent to my Serious medical need by
Dental at high Desert State Prison

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

- 9.) After examination it was determined I did have a Serious medical need which warranted medical attention by a train licend Physicians
- 10.) I was then told I'd be placed on a list to be treated by defendant Jane Doe, John Doe and defendant S. Bruns
- 11.) I then informed them that I had been filling out kites to be seen and treated for months.
- 12.) They Sarcastically stated they new about my many kites and stated I was making them look "bad" calling me mr. ASAP this conversation was between me and all (3) defendants.
- 13.) I then explained to defendant #1, #2 and #3 the excruciating Pain I was in and I beleive it is effecting my blood Pressur. In which they replied dental has nothing to do with blood Pressur
- 14.) I was told I was placed on the list to be treated and sent back to my unit.
- 15.) (9) day later I informed dental again that the Pain was to much my condition was worsening and that my teeth were chipping and had Chiped (3) times since I asked to be treated.
- 16.) Ultimately it take (117) days to be treated for my Serious medical need causing unrepairable damage to my teeth chips which left Sharp edges that cuts my tongue and a (117)^{days} of wouten affliction of Pain which effected my blood Pressur and overall health in which was Deliberate and Indifference to my Serious medical Needs.

outline).

- a) Defendants: _____
- b) Name of court and docket number: _____
- c) Disposition (for example, was the case dismissed, appealed or is it still pending?):

- d) Issues raised: _____
- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

- 2) Have you filed an action in federal court that was dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted? Yes No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: N/A
- b) Name of court and case number: N/A
- c) The case was dismissed because it was found to be (check one): frivolous
 malicious or failed to state a claim upon which relief could be granted.
- d) Issues raised: N/A
- e) Approximate date it was filed: N/A
- f) Approximate date of disposition: N/A

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: _____
- b) Name of court and case number: _____

- c) The case was dismissed because it was found to be (check one): _____ frivolous
 _____ malicious or _____ failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: _____
- b) Name of court and case number: _____
- c) The case was dismissed because it was found to be (check one): _____ frivolous
 _____ malicious or _____ failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

- 3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? ☒ Yes ☐ No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) _____ disciplinary hearing; (2) _____ state or federal court decision; (3) _____ state or federal law or regulation; (4) _____ parole board decision; or (5) _____ other _____

If your answer is "Yes", provide the following information. Grievance Number 2006302297
 Date and institution where grievance was filed 5-2-16, High Desert State Prison

Response to grievance: Dental record show you had been
seen grievance denied

E. REQUEST FOR RELIEF

I believe that I am entitled to the following relief:

Compensatory damages in the following amount:

1.) 20,000 jointly and severally against defendant John Doe (HSP)
S. Burns (Dentist Ass.), Jane Doe (Dentist Ass.). For Deliberate and Indifference

to Plaintiff Serious Medical needs which resulted in chronic and damaged
tooth and wanton and affliction of Pain. Punitive damages in the following amount

1.) 10,000 against defendant John Doe (H.S.P. Dentist)
2.) 5,000 against defendant S. Burns (Dentist Ass.)
3.) 5,000 against defendant Jane Doe (Dentist Ass.)

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

(Name of Person who prepared or helped
prepare this complaint if not Plaintiff)

Shannon Carter
(Signature of Plaintiff)

11-30-16

(Date)

(Additional space if needed; identify what is being continued)

Damages: Nominal damages in the amount the jury see
fit.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Civil Complaint
(Title of Document)

filed in District Court Case number N/A

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Shannon Carter
Signature

11-30-16
Date

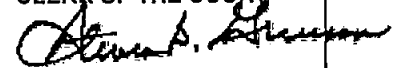
Shannon Carter
Print Name

Pro-se
Title

EXHIBIT # 7

EXHIBIT # 7

Electronically Filed
5/22/2017 2:43 PM
Steven D. Grierson
CLERK OF THE COURT



MDSM
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Nevada Attorney General
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*Attorneys for Defendants State of Nevada,
James Dzurenda, Scherrie Bean,
and Ronrico Mangapit*

DISTRICT COURT
CLARK COUNTY, NEVADA

SHANNON CARTER,

Plaintiff,

v.

JOHN DOE HDSP DENTIST, et al.,

Defendants.

CASE NO. A-16-747779-C

DEPT. NO. II

DEFENDANTS' MOTION TO DISMISS

Defendants State of Nevada, ex rel. Nevada Department of Corrections, James Dzurenda, Scherrie Bean, and Ronrico Mangapit, by and through counsel, Adam Paul Laxalt, Nevada Attorney General, and Barrack T Potter, Deputy Attorney General, hereby move to dismiss Plaintiff Shannon Carter's Complaint. This motion is made pursuant to Nevada Rule of Civil Procedure ("NRCP") 12(b) and based on the following memorandum of points and authorities, the pleadings on file, and any further evidence the Court deems appropriate to consider.

NOTICE OF HEARING ON MOTION

TO: ALL INTERESTED PARTIES:

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing DEFENDANTS' MOTION TO DISMISS on for hearing before Department II of the Eighth Judicial District Court, Clark County, Nevada, Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the 28 day of June, 2017, at the hour of 9:00am .m., or as soon thereafter as counsel may be heard.

DATED this 22nd day of May, 2017.

ADAM PAUL LAXALT
Attorney General

By: /s/ Barrack T Potter
BARRACK T POTTER (Bar No. 14105)
Deputy Attorney General
*Attorneys for Defendants State of Nevada,
James Dzurenda, Scherrie Bean,
and Ronrico Mangapit*

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

Plaintiff, Shannon Carter (Plaintiff), is an inmate lawfully incarcerated in the Nevada Department of Corrections (NDOC) and is currently housed at High Desert State Prison (HDSP). On December 8, 2016, Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 against John Doe, HDSP Dentist; S. Bruns, Dentist Assistant; Jane Doe, Dental Assistant; the State of Nevada; and James Dzurenda, Director of NDOC. *See* Compl. On February 22, 2017, Plaintiff filed an Amended Complaint against Defendants the State of Nevada *ex rel.* NDOC; James Dzurenda, Director of NDOC; Scherrie Bean, a dental assistant at HDSP; and Ronrico Mangapit, a dentist at HDSP (collectively referred to as "Defendants"). Defendants Bean and Mangapit were served with the Summons and Amended Complaint on April 7, 2017 through the NDOC. Defendant Dzurenda was served with the Summons and Amended Complaint on April 27, 2017 through the NDOC.

Plaintiff asserts one cause of action in his Amended Complaint against the Defendants for deliberate indifference to serious medical needs under the Eighth Amendment. Am. Compl. at 4. Plaintiff alleges that Defendants Bean and Mangapit were deliberately indifferent to his serious medical needs for "delaying treatment to (3) effect [sic] teeth[,] [F]or [one] over 117 days[,] the [second] over 150 and the thired [sic] tooth has still to this day has [sic] not been addressed." *Id.* at 2. Plaintiff claims that Defendant Dzurenda was deliberate and indifferent by failing to address the inadequate dental procedure at HDSP, which he was aware of or should have been aware of. *Id.*

Plaintiff claims that "on 2/20/16 [he] informed dental at High Desert State Prison, via medical kite, that [he] was having pain in some of [his] back teeth and would like to be seen." *Id.* "On 2/29/16, [he] received a copy of [his] kite stating apt. scheduled by defendant S. Bean." *Id.* Plaintiff further alleges that he was called to dental for an examination 61 days from informing dental of his desire to be seen. *Id.* At that appointment Plaintiff alleges he was advised he would have to have treatment for his teeth and was placed on a treatment list. *Id.* at 5.

1 In his Amended Complaint, Plaintiff asserts that he attempted to resolve this
 2 dispute by submitting grievances to NDOC. *Id.* at 8. Plaintiff specifically references
 3 Grievance Number 20063023297. *Id.* Plaintiff alleges in his informal grievance that
 4 "HDSP Dental Program and/or Policy is inadequate and deliberate indifference [sic] to my
 5 serious medical needs[.]" See State of Nevada, Department of Corrections, Inmate
 6 Grievance History, attached hereto as Exhibit A. The official response to that grievance
 7 was that "the last time you saw dental was 4/29/16. It was noted you need fillings.
 8 Because of the modified lockdown on unit 10 the list of I/M from unit 10 has grown. You
 9 are on the dental list and will be seen at the next available appointment." *Id.*

10 Plaintiff then filed a first level grievance disagreeing with the official response and
 11 stating "[t]here is no reason it should have taken 117 days to be treated for a condition
 12 that was determined by a dentist needed treatment." *Id.* The official response to
 13 Plaintiff's first level grievance was that "[b]ased on your medical records, on 6/16/16, you
 14 were evaluated, examined and given the necessary dental treatment (fillings) by the
 15 dentist. Several x-rays were performed and you were advised if any other symptoms
 16 develop, submit a kite and you will be scheduled accordingly." *Id.*

17 Plaintiff filed a second level grievance and stated:

18 It take [sic] 147 days to be treated for my serious medical needs.
 19 Upon treatment the dental doctor determined I had 4 more
 20 cavities yet refused to treat them. He told me when I can no
 21 longer take the pain put in a kite. I informed him I was in pain
 22 and if I put in a kite they will charge me again when I [am]
 23 already here. I was informed that I would be put on a dental
 24 plan. [T]his has not happened. Please help.

25 *Id.* Dr. Aranas stated in the official response that:

26 Based on your medical records, on 4/4/16, you were scheduled to
 27 see the dentist but unfortunately you were not seen because your
 28 unit was on lock down on that day for safety and security
 reasons. On 4/29/16, you had a dental consult. You were told that
 you need fillings on teeth #18, 19 and 31 and pain medications
 were prescribed. On 6/6/16, filling was done based on the finding
 that this tooth had the largest cavity. X-rays were taken. Just
 like any other Department, Inmate services and appointments
 will be provided using the priority system established by the
 institution dentist per AR 631. There other inmates waiting for
 their turn to be seen. A dentist may extract several teeth, or fill

multiple teeth, or extract one tooth or fill one tooth depending on the case and the situation and time needed and available. You are advised to submit a kite about your dental complaint and service will be rendered appropriately and accordingly.

Id.

II. LEGAL STANDARD

A. Failure to State a Claim

A pleading is subject to certain rules; primary among them is that a plaintiff's complaint must adhere to Nev. R. Civ. P. 8(a), which provides:

A pleading which sets forth a claim for relief [. . .] shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief; and (2) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

NEV. R. CIV. P. 8(a). The State of Nevada follows a notice pleading standard as to NEV. R. CIV. P. 8(a) and the sufficiency of the complaint. *See Crucil v. Carson City*, 95 Nev. 583, 585, 600 P.2d 216, 217 (1979) (“[T]he pleading of [a] conclusion, either of law or fact, is sufficient so long as the pleading gives fair notice of the nature and basis of the claim.”). Nevertheless, even under the notice pleading standard, “[a] complaint must set forth sufficient facts to establish all necessary elements of a claim for relief [. . .] so that the adverse party has adequate notice of the nature of the claim and relief sought.” *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984) (internal citations omitted).

NEV. R. CIV. P. 12(b)(5) allows this Court to dismiss a complaint for “failure to state a claim upon which relief can be granted.” When reviewing a motion to dismiss under NEV. R. CIV. P. 12(b)(5), this Court “must construe the pleadings liberally and accept all factual allegations in the complaint as true.” *Blackjack Bonding v. City of Las Vegas Mun. Ct.*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). In doing so, “this [C]ourt must draw every fair inference in favor of the non-moving party.” *Id.* “A complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her

1 to relief.” *Id.* (quoting *Simpson v. Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967
 2 (1997)). Conclusory allegations are “not entitled to be assumed true,” and a “formulaic
 3 recitation of the elements” of a claim is insufficient to state a claim. *Ashcroft v. Iqbal*, 556
 4 U.S. 662, 681 (2009) (internal quotation marks omitted). Thus, a complaint that is
 5 “vague and conclusory” fails to state a claim. *Madera v. State Indus. Ins. Sys.*, 114 Nev.
 6 253, 259, 956 P.2d 117, 121 (1998).

7 “As a general rule, the court may not consider matters outside the pleading being
 8 attacked.” *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261
 9 (1993). “However, the court may take into account matters of public record, orders, items
 10 present in the record of the case, and any exhibits attached to the complaint when ruling
 11 on a motion to dismiss for failure to state a claim upon which relief can be granted.” *Id.*
 12 Additionally, “a document is not outside the complaint if the complaint specifically refers
 13 to the document and if its authenticity is not questioned.” *Branch v. Tunnell*, 14 F.3d
 14 449, 454 (9th Cir.1994) *overruled on other grounds by Galbraith v. Cty. of Santa Clara*,
 15 307 F.3d 1119, 1125–26 (9th Cir.2002).

16 B. Service of Process

17 NEV. R. CIV. P. 12(b)(3) and 12(b)(4) provide for dismissal of an action due to defects
 18 in service of process. The Nevada Supreme Court has held that “notice is not a substitute
 19 for service of process. Personal service or a legally provided substitute must still occur in
 20 order to obtain jurisdiction over a party.” *C.H.A. Venture v. G.C. Wallace Consulting*
 21 *Eng’rs, Inc.*, 106 Nev. 381 384, 794 P.2d 707, 709 (1990).

22 If a service of the summons and complaint is not made upon a
 23 defendant within 120 days after the filing of the complaint, the
 24 action shall be dismissed as to that defendant without prejudice
 25 upon the court's own initiative with notice to such party or upon
 26 motion, unless the party on whose behalf such service was
 27 required files a motion to enlarge the time for service and shows
 28 good cause why such service was not made within that period. If
 the party on whose behalf such service was required fails to file
 a motion to enlarge the time for service before the 120-day
 service period expires, the court shall take that failure into
 consideration in determining good cause for an extension of
 time. Upon a showing of good cause, the court shall extend the

time for service and set a reasonable date by which service should be made.

NRCP 4(i). “To avoid dismissal of a case, NRCP 4(i) requires a party who fails to effectuate service of process within 120 days from the filing of the complaint to demonstrate good cause for the delay of service.” *Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 594, 245 P.3d 1198, 1199 (2010). “Dismissal is mandatory unless there is a legitimate excuse for failing to serve within the 120 days.” *Scrimmer v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 116 Nev. 507, 512–13, 998 P.2d 1190, 1193 (2000).

III. ARGUMENT

A. Plaintiff's Complaint Fails to Meet the Elements for a Claim for Deliberate Indifference to Serious Medical Needs and Must be Dismissed.

“Under 42 U.S.C. § 1983, to maintain an Eighth Amendment claim based on prison medical treatment, an inmate must show deliberate indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal quotations omitted). The test for deliberate indifference consists of two parts. *Id.* “First, the plaintiff must show a serious medical need by demonstrating that failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain.” *Id.* “Second, the plaintiff must show the defendant's response to the need was deliberately indifferent.” *Id.* The second prong is “satisfied by showing (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the indifference.” *Id.* (emphasis added).

“A difference of opinion between a prisoner-patient and prison medical authorities regarding treatment does not give rise to a § 1983 claim.” *Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1344 (9th Cir. 1981). To establish that a difference of opinion amounted to deliberate indifference, the prisoner “must show that the course of treatment the doctors chose was medically unacceptable under the circumstances” and “that they chose this course in conscious disregard of an excessive risk to [the prisoner's] health.” *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996). When a prisoner alleges

1 that delay of medical treatment evinces deliberate indifference, the prisoner must show
 2 that the delay led to further injury. *See Shapley v. Nev. Bd. of State Prison Comm'rs*, 766
 3 F.2d 404, 407 (9th Cir. 1985) (holding that "mere delay of surgery, without more, is
 4 insufficient to state a claim of deliberate medical indifference").

5 Here, the crux of Plaintiff's case is that "[t]here is no reason it should have taken
 6 117 days to be treated for a condition that was determined by a dentist needed
 7 treatment." *See Exhibit A.* However, "mere delay of surgery, without more, is
 8 insufficient to state a claim of deliberate medical indifference." *See Shapley*, 766 F.2d at
 9 407. Plaintiff has failed to allege "a purposeful act or failure to respond to a prisoner's
 10 pain or possible medical need" and "harm caused by the indifference." *Jett*, 439 F.3d at
 11 1096. Conversely, Plaintiff admits in his Amended Complaint that he was seen multiple
 12 times and treated by the dental office. *See Am. Compl. generally; see also Exhibit A.*
 13 Therefore, Plaintiff's Complaint fails to state a claim for deliberate indifference to serious
 14 medical needs and must be dismissed.

15 **B. In the Alternative, Plaintiff's Amended Complaint Must be**
 16 **Dismissed Against Dzurenda Because Plaintiff Failed to Serve**
 17 **Within the 120 Day Timeframe and Cannot Show Good Cause for His**
 18 **Failure**

19 Plaintiff's Complaint must be dismissed against Dzurenda for failure to serve
 20 within 120 days. "To avoid dismissal of a case, NRCP 4(i) requires a party who fails to
 21 effectuate service of process within 120 days from the filing of the complaint to
 22 demonstrate good cause for the delay of service." *Saavedra-Sandoval v. Wal-Mart Stores*,
 23 126 Nev. 592, 594, 245 P.3d 1198, 1199 (2010). "Dismissal is mandatory unless there is a
 24 legitimate excuse for failing to serve within the 120 days." *Scrimmer v. Eighth Jud. Dist.*
 25 *Ct. ex rel. Cty. of Clark*, 116 Nev. 507, 512–13, 998 P.2d 1190, 1193 (2000).

26 On December 8, 2016, Plaintiff filed his Complaint and named Dzurenda as a
 27 defendant. Plaintiff did not serve Dzurenda until April 27, 2017, which is 140 days from
 28 the time the Complaint was filed. Plaintiff will not be able to show good cause as to why
 service was not completed within 120 days. Plaintiff will not be able to show good cause

1 as to why a motion to extend time to serve was not filed with this Court. Therefore,
2 Plaintiff's Complaint must be dismissed against Dzurenda.

3 IV. CONCLUSION

4 Defendant respectfully requests this Court dismiss Plaintiff's Complaint for failure
5 to state a claim under NEV. R. CIV. P. 12(b)(5) because Plaintiff's Complaint fails to meet
6 the elements for a claim for deliberate indifference to serious medical needs. In the
7 alternative, this Court should dismiss Plaintiff's Complaint against Dzurenda for failure
8 to serve within 120 days.

9 DATED this 22nd day of May, 2017.

10 ADAM PAUL LAXALT
11 Attorney General

12 By: /s/ Barrack T Potter
13 BARRACK T POTTER (Bar No. 14105)
14 Deputy Attorney General
15 Attorneys for Defendants State of Nevada,
16 James Dzurenda, Scherrie Bean, and Ronrico
17 Mangapit
18
19
20

EXHIBIT # 8

EXHIBIT # 8

Shannon Carter
Name
PO Box 650

Indian Springs NV 89070

#70773
Prison Number

FILED
FEB 22 2017

John L. Blum
CLERK OF COURT

A-16-747779-C
ACOM
Amended Complaint
4625534



DISTRICT COURT
CLARK COUNTY, NEVADA

AMENDED COMPLAINT

Shannon Carter,
Plaintiff,

vs.

The State of Nevada James
Dzurenda Dir. of N.DOC

S. Bean (Dentist Ass.)
H.D.S.P.

Mangapitt (Dentist)
H.D.S.P.

Jane Doe (Dentist)
Ass.

Defendant(s).

CASE NO. A-16-747779-C
(To be supplied by the Clerk)

DEPT. NO. II

NRS 41.0322 TORT ACTION

CIVIL RIGHTS COMPLAINT

PURSUANT TO

42 U.S.C. § 1983.

A. JURISDICTION

- 1) This complaint alleges that the civil rights of Plaintiff,

Shannon Carter

(Print Plaintiff's name)

who presently resides at High Desert State Prison, were

violated by the actions of the below named individuals which
were directed against The State of Nevada ex. rel N.DOC Director
Dzurenda

Plaintiff at High Desert State Prison on the following dates
(institution/city where violation occurred)

2/20/16 - Present Day, and _____

(Count I)

(Count II)

(Count III)

Make a copy of this page to provide the below
information if you are naming more than five (5) defendants

2) Defendant James Dzurenda resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as Director of NDOC. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Deliberate and Indifferent to my Serious medical need by failing to address the inadequate Dental Procedure at (H.D.S.P) which he was or should have now of through multiple Grievances and Civil law Suits.

3) Defendant S. Bean (Dentist) resides at High Desert State Prison,
(full name of first defendant) (address if first defendant)
and is employed as Dentist Assistant. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Deliberate and Indifferent to my Serious medical need by delaying treatment when knowing I was in pain and couldn't eat or sleep via Kites

4) Defendant Maggipitt resides at High Desert State Prison,
(full name of first defendant) (address if first defendant)
and is employed as The Dentist. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Deliberate and Indifferent to my Serious medical need for delaying treatment to (3) effect teeth for (1) over 117 days and the other over 150 and the injured tooth has still to this day has not been addressed.

5) Defendant Jane Doe (AKA CM) resides at High Desert State Prison,
(full name of first defendant) (address if first defendant)
and is employed as Dentist Assistant. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Deliberate and Indifferent to my Serious medical need for delaying my treatment when informed I couldn't eat or sleep via medical Kite.

6) Defendant _____ resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
_____ individual _____ official capacity: (Check one or both). Explain how this
defendant was acting
under color of law: _____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and
42 U.S.C. § 1983. If you wish to assert jurisdiction under different or
additional statutes, list them below.

28 U.S.C. § 242, NRS 41.0322. . . .

B. NATURE OF THE CASE

1) Briefly state the background of your case.

H.D.S.P.'S Dental Program was deliberate and indifferent to my serious medical
needs by failing to address infected teeth which was causing severe pain, swelling
bleeding, loss of sleep, ability to eat, high blood pressure and ultimately a decrease in my
overall health. Although I informed dental multiple times of my health decreasing do
to my teeth H.D.S.P. Dental took (117) days to treat (1) of the (3) effected tooth and
has still to this day not treated the 3rd tooth. During the (117) days dental refused
to treat my decaying hole in my back teeth, I experienced severe pain and had chipped my tooth
(3) times permanently damaging the tooth and leaving a sharp tip on the tooth which
cuts my tongue

C. CAUSE OF ACTION

COUNT I

The following civil rights has been violated: 8th Amendment
Deliberate and indifferent to my serious medical needs

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

- 1) On 2/20/16 I informed dental at High Desert State Prison via medical kite that I was having Pain in some of my back teeth and would like to be seen.
- 2) I also informed dental that I had been in Prison since 2001 and only been to dental once, in hopes that dental would understand my issue was genuine.
- 3) On 2/29/16 I received a copy of my kite stating Appt Scheduled by defendant S. Bean
- 4) Thereafter, I wrote dental again informing them in more detail of my issue holes in my back molars, food gets in causing Pain and loss of Sleep.
- 5) Weeks later I informed dental again that my issue with my teeth was worsening effecting my over all health that I haven't eat in (3) days and haven't slept in (4) effecting my Blood Pressure.
- 6) Weeks later I had still never been seen by this time my gums were bleeding with swelling white blisters on my gums.
- 7) I again informed dental and expressed to them it was effecting my blood Pressure.
- 8) Finally after months of excruciating Pain, loss of Sleep, loss of weight from the loss of the ability to eat and out of control (Blood Pressure) (61) days from informing dental of my serious medical need I was called to dental for an examination.

COUNT [#] 1 Continuance

The following civil rights has been violated: 8th Amendment Deliberate and Indifferent to my Serious medical needs

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

9.) After examination it was determined I did have a Serious medical need which warranted medical attention by a trained licend Physician.

10.) I was then told I would be placed on a list to be treated by defendant S. Bean, Mangapitt and Jane Doe

11.) I then informed them that I had been puting in kites to be seen and treated for months.

12.) They Sarcastically Stated they new about my many kites and stated I was making them look "bad" Calling me Mr. ASAP this conversation was between me and all (3) defendants.

13.) I then explain to them the excruciating Pain I was in and that I believed it was effecting my Blood Pressure Inwhich they replied dental has nothing to do with Blood Pressure

14.) I was then told by defendant S. Bean and Jane Doe (Dentist Ass.) I was Placed on the list to be treated and sent back to my unit.

15.) 9 days later I informed dental again that the Pain was to much my condition was worsing and that my teeth were chipping and had chiped (3) times Since I asked to be treated

16.) Ultimately it toke (17) days to be treated for (1) of the three teeth that warranted treatment causing unreparable damage to my teeth chips which left Sharp

COUNT ~~1~~ continuance of count #1

The following civil rights has been violated: 8th Amendment

Deliberate and Indifferent to my Serious medical need

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

edges that cuts my tongue and caused wanton affliction of Pain which effected my Blood Pressure and overall health in which was Deliberate and indifferent to my serious medical needs I ^{fear} for the safety of my health Here at (H.D.S.P) Due to the Sarcastic Statements of making Dental look bad I fear kiting dental and letting them know that I am still very much in pain and in need of dental attention as they well know from the examination by my dentist.

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

- 1) Have you filed other actions in state or federal courts involving the same or similar facts as involved in this action? Yes ☒ No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page following the below

outline).

- a) Defendants: N/A
- b) Name of court and docket number: N/A
- c) Disposition (for example, was the case dismissed, appealed or is it still pending?):

- d) Issues raised: N/A
- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

- 2) Have you filed an action in federal court that was dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?
___ Yes ___ No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: N/A
- b) Name of court and case number: N/A
- c) The case was dismissed because it was found to be (check one): ___ frivolous ___ malicious or ___ failed to state a claim upon which relief could be granted.
- d) Issues raised: N/A
- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: N/A
- b) Name of court and case number: N/A

- c) The case was dismissed because it was found to be (check one): _____ frivolous
 _____ malicious or _____ failed to state a claim upon which relief could be granted.
- d) Issues raised: _____
- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: _____
- b) Name of court and case number: _____
- c) The case was dismissed because it was found to be (check one): _____ frivolous
 _____ malicious or _____ failed to state a claim upon which relief could be granted.
- d) Issues raised: _____
- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

- 3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? ☒ Yes ☐ No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) _____ disciplinary hearing; (2) _____ state or federal court decision; (3) _____ state or federal law or regulation; (4) _____ parole board decision; or (5) _____ other _____

If your answer is "Yes", provide the following information. Grievance Number 20063023297

Date and institution where grievance was filed 5-2-16 High Desert State Prison

Response to grievance: Dental record show you had been seen
grievance denied

E. REQUEST FOR RELIEF

I believe that I am entitled to the following relief:

Compensatory damages in the following amount:

1) 20,000 jointly and severally against defendant, Mangapill (H.D.S.P. Dentist) James Dzurenda (NDOC Director)
S. Bean (H.D.S.P. Dentist Ass.) and Jane Doe (H.D.S.P. Dentist Ass.) For Deliberate and Indifference to Plaintiffs

Serious Medical needs resulting in chipped and damaged teeth and constant affliction of Pain.

Punitive Damages in the following amount: 1) 10,000 against defendant James Dzurenda (NDOC Director)

2) 10,000 against defendant, Mangapill (H.D.S.P. Dentist)

3) 5,000 against defendant S. Bean (Dentist Ass.) 4) 5,000 against defendant Jane Doe (Dentist Ass.)

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

(Name of Person who prepared or helped prepare this complaint if not Plaintiff)

Shannon Carter
(Signature of Plaintiff)

2/8/17
(Date)

(Additional space if needed; identify what is being continued)

Damages: Nominal damages in the amount the jury sees fit.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Civil Complaint
(Title of Document)

filed in District Court Case number N/A



Does not contain the social security number of any person.

-OR-



Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Shannon Carter
Signature

2/8/17
Date

Shannon Carter
Print Name

Pro-se
Title

EXHIBIT # 9

EXHIBIT # 9



Nevada Department of Corrections

Improper Grievance Memo

Brian Sandoval
Governor

James Dzurenda
Director

Brian E. Williams, Sr.
Warden, HDSP

TO: Carter, Shannon #70773 8C/14
FROM: J. Nash, AW ✓
DATE: 4/18/2017

RE: Improper Grievance #2006-30-46164 IF Level Grievance

The attached grievance is being returned to you for the following reason(s):

<p>This grievance may NOT proceed to the next level Per AR 740.03,5 due to the following:</p> <p><input type="checkbox"/> Non-grievable issue.</p> <p> <input type="checkbox"/> State and federal court decision.</p> <p> <input type="checkbox"/> State, federal and local laws and regulations.</p> <p> <input type="checkbox"/> Parole Board decision.</p> <p> <input type="checkbox"/> Lacks standing.</p> <p><input checked="" type="checkbox"/> Untimely submission.</p> <p><input type="checkbox"/> Abuse of Inmate Grievance Procedure.</p> <p> <input type="checkbox"/> Any language, writing or illustration deemed to be obscene, profane or derogatory.</p> <p> <input type="checkbox"/> A threat of serious bodily injury to a specific individual.</p> <p> <input type="checkbox"/> Specific claims or incidents previously filed by the same inmate.</p> <p> <input type="checkbox"/> More than one (1) grievance per week, Monday through Sunday.</p> <p> <input type="checkbox"/> More than two (2) unfounded, frivolous or vexatious grievances per month.</p>	
<p>After correcting the deficiencies(s) listed below; you may re-submit your grievance at the same level.</p> <p><input type="checkbox"/> The grievance contains more than one (1) appropriate issue. Only 1 issue is allowed per grievance.</p> <p><input type="checkbox"/> No factual harm/loss noted and/or no remedy requested.</p> <p><input type="checkbox"/> Other; specify: _____</p>	

Failure to re-submit the grievance through the prescribed timeframe shall constitute abandonment.

CCSC BA
Witness Signature

4/24/17
Date

[Signature]
Inmate Signature

4.21.17
Date

cc: Original - Inmate
Copy - Grievance File

DOC-3098 (01/17)

Log Number

2/11/17 3/14/17

NEVADA DEPARTMENT OF CORRECTIONS
INFORMAL GRIEVANCENAME: Shannon Carter I.D. NUMBER: 70773INSTITUTION: H.D.S.P. UNIT: 8C14GRIEVANT'S STATEMENT: "Retaliation" on or about February 1, 2017

I was placed on Dental Sick call by the A.C.S. office to correct
a constitutional violation by H.D.S.P. Dental programs Deliberate
and indifference, refusing to treat my affected tooth which was not
still is causing extreme pain loss of sleep High Blood Pressure weight loss from

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: Shannon Carter DATE: 4.6.17 TIME: 5:30GRIEVANCE COORDINATOR SIGNATURE: [Signature] DATE: 4-10-17 TIME: 11:25 AMGRIEVANCE RESPONSE: See attached responses1/10/17 accepted

CASEWORKER SIGNATURE: _____ DATE: _____

GRIEVANCE UPHELD _____ GRIEVANCE DENIED _____ ISSUE NOT GRIEVABLE PER AR 740

GRIEVANCE COORDINATOR APPROVAL: [Signature] DATE: 4/12/17INMATE AGREES, 1 INMATE DISAGREESINMATE SIGNATURE: [Signature] DATE: 4.25.17

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original: To inmate when complete, or attached to formal grievance
 Canary: To Grievance Coordinator
 Pink: Inmate's receipt when formal grievance filed
 Gold: Inmate's initial receipt

DOC 3091 (12/01)

EXHIBIT # 10

EXHIBIT # 10

28

Shannon Carter # 70773
 P.O. Box 650
 Indian Springs, N.V. 89070
 Pro-se

FILED

2017 JUN 12 A 9 06

DISTRICT COURT
 CLARK COUNTY NEVADA

Sharon D. Schuman
 CLERK OF THE COURT

Shannon Carter,
 Plaintiff

Case No. A-16-747779-C
 DEPT NO. II

V

James Dzurenda et al.,
 Defendants

DECLARATION IN SUPPORT OF PLAINTIFF
 MOTION FOR A TEMPORARY RESTRAINING ORDER
 AND PRELIMINARY INJUNCTION

A-16-747779-C
 DECL
 Declaration
 4556798



Shannon Carter, States:

1. I am the Plaintiff in this case. I make this declaration in support of my motion for temporary Restraining order and Preliminary Injunction, to ensure I receive adequate medical care Pertaining Specifically to dental and the infected tooth left in my mouth for over a year by the defendants in the instant case.

2. I have been denied adequate medical care while housed at H.D.S.P resulting in Permanent damage to my teeth, bleeding gum, unable to eat sleep and unnecessary wanton infliction of Pain.

3. Currently, I am housed at H.D.S.P were I am being outright denied Dental care. On or about February 2, 2017 Attorney General Foster had me put on dental Sick call list to be treated H.D.S.P Dental Still refuse to treat me "Drop my law suit and the'll treat me" is what they stated and sent me back to my unit.

4. The denial of medical care and the retaliational acts of H.D.S.P Dental has made it impossible for me to receive adequate treatment here.

RECEIVED

JUN 05 2017

CLERK OF THE COURT

1 5. It is therefore, warranted that this honorable court
2 grant Plaintiffs Temporary Restraining order and Preliminary Injunction,
3 To correct an on going constitutional Violation.

4 6. It would be unrealistic for Plaintiff to willingly go under
5 the knife of the defendants after being denied for over a year
6 and the retaliation on February 2, 2017.

7 7. It is in the interest of Justice and Judicial Efficiency
8 this court grant Plaintiff Temporary Restraining order and Preliminary Injunction.

9
10 Pursuant to 28 U.S.C. 1746, I Declare under Penalty of
11 Perjury that the foregoing is true and correct

12
13
14 Dated this 31 day of May, 2017

15
16 Respectfully Submitted
17 Shannon Carter
18 Shannon Carter # 70773
19 P.O. Box 650
Indian Springs NV 89070
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Shannon Carter, hereby certify that I am the petitioner in this matter and I am representing myself in propria persona.

On this 31 day of May, 2017, I served copies of the Declaration in support of Plaintiff Motion For A temporary Restraining order and Preliminary Injunction,

in case number: A-16-747779-C and placed said motion(s) in U.S. First Class Mail, postage pre-paid:

Address: Clerk of the Court

Sent to: 200 Lewis Ave 3rd Floor
Las Vegas N.V. 89155-1160

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is/the petitioner in the above-entitled action, and he, the defendant has read the above CERTIFICATE OF SERVICE and that the information contained therein is true and correct. 28 U.S.C. §1746, 18 U.S.C. §1621.

Executed at High Desert State Prison
on this 31 day of May, 2017.

Shannon Carter # 70773
DOP#

PETITIONER -- In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

I, Shannon Carter, NDOC# 70773,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Declaration in Support of Plaintiff
Motion For A Temporary restraining order and Preliminary Injunction,
DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY

PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 31 DAY OF may, 2017.

SIGNATURE: Shannon Carter

INMATE PRINTED NAME: Shannon Carter

INMATE NDOC # 70773

INMATE ADDRESS: ~~ELY STATE PRISON~~ High Desert State Prison
~~P.O. BOX 1989~~ P.O. Box 650
~~ELY, NV 89301~~ Indian Springs NV 89070

EXHIBIT # 11

EXHIBIT # 11

RELEASE OF LIABILITY FOR REFUSAL OF HEALTH CARE TREATMENT

The undersigned inmate refuses recommended/scheduled healthcare treatment provided by NDOC at this time. Refusing does not necessarily waive his/her right to subsequent health care. Inmate has the right to accept or refuse health care offered at a later date. DOC 2525 Directive to Physicians or other valid declaration shall be honored.

The health care treatment listed below were refused at this time:

Check all that apply

- ☐ Infirmary Appointment for: _____
- ☒ Dental Appointment for: rest of TX. Pt. is not having further pain +
- ☐ Psychiatry/Psychology Appointment for: wishes to wait for any problems to arise.
- ☐ Physical Therapist Appointment for: _____
- ☐ Optometrist Appointment for: _____
- ☐ Medication (List) _____
- ☐ Chronic Care Clinic for: _____
- ☐ OSHA Protocol for TB/Bloodborne Pathogens: _____
- ☐ Other Describe: _____

COMMENTS: _____

I hereby release the Nevada Department of Corrections from any and all liability and responsibility that might result from my refusal of examination, treatment or testing described above; and further release any and all personnel from any and all liability and/or responsibility that might be incurred.

☒ INMATE HAS BEEN INFORMED OF THE POTENTIAL ADVERSE MEDICAL CONSEQUENCES OF REFUSAL.

I CERTIFY, I have read or had read to me the contents of this form. This release has been signed under no duress and with full understanding of possible hazards which may occur due to refusal.

I further understand that I may be subject to disciplinary action up to and including being financially responsible for all expenses related to this refusal.

Shannon Carter
INMATE/STAFF SIGNATURE

70773
ID#

11-7-18
DATE

Carly M. [Signature]
HEALTH STAFF WITNESS

11/7/18
DATE

[Signature]
HEALTH STAFF WITNESS (If second witness necessary)

11/7/18
DATE

NEVADA DEPARTMENT OF CORRECTIONS
**RELEASE OF LIABILITY FOR
REFUSAL OF HEALTH CARE
TREATMENT**

NAME: Carter Shannon D
Last First MI

ID# 70773 INSTITUTION: HDSP

EXHIBIT # 12

EXHIBIT # 12

1 DECL
2 ADAM PAUL LAXALT
3 Nevada Attorney General
4 BARRACK T POTTER (Bar No. 14105)
5 Deputy Attorney General
6 State of Nevada
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*Attorneys for Defendants
State of Nevada, James
Dzurenda, Scherrie Bean,
and Ronrico Mangapit*

DISTRICT COURT
CLARK COUNTY, NEVADA

13 SHANNON CARTER,
14 Plaintiff,

15 v.

16 JOHN DOE HDSP DENTIST, et al.,
17 Defendants.

Case No. A-16-747779-C
Dept. No. II

**DECLARATION OF SCHERRIE
BEAN**

19 I, Scherrie Bean, hereby declare based on personal knowledge, that the following
20 assertions are true:

21 1. I am currently employed by the Nevada Department of Corrections as a
22 Dental Assistant 2.

23 2. I have been employed with the Nevada Department of Corrections for a total
24 of nine years.

25 3. My job responsibilities include set up and breakdown before and after
26 treatment.

27 4. Additionally, I assist the dentist during treatment.

28 5. I am familiar with Plaintiff, Shannon Carter, inmate number 70773.

6. According to his dental chart, Plaintiff was seen on three separate occasions for treatment in 2016.

7. Plaintiff had x-rays taken on April 21, 2016 by Dr. Mangapit.

8. Dr. Mangapit determined that Plaintiff would need multiple teeth filled,

9. Dr. Mangapit completed Plaintiff's first filling on June 16, 2016 and Plaintiff was scheduled for another appointment to address another tooth that Plaintiff was having issues with.

10. Plaintiff was then scheduled for another filing, which was completed by Dr. Mangapit on September 1, 2016.

11. Plaintiff was then scheduled for more treatment on October 6, 2016; however, Plaintiff was rescheduled to February 1, 2017 due to an emergency recall by the prison.

12. Plaintiff was seen by Dr. Bitar and I on February 1, 2017.

13. During that visit, Plaintiff stated that he did not have any dental issues concerning him and that he did not want to be seen for any treatment.

14. Furthermore, Plaintiff claimed that all of his dental treatment had already been completed and he did not even know why he was called to dental.

15. Plaintiff claimed that he did not want to been seen for treatment, but instead wanted the names of the dental assistants for his civil lawsuit.

16. Dr. Bitar told Plaintiff that the requested information could not be released to him and Plaintiff was sent back to his cell.

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 30th day of June, 2017.



Sherrie Bean

EXHIBIT #13

EXHIBIT #13

DECLARATION OF SCHERRIE BEAN

I, Scherrrie Bean, being first duly sworn, under penalty of perjury under the laws of the United States deposes and says:

1. In connection with filing this declaration, I was contacted by the Nevada Attorney General's Office, who, on information and belief, is involved in the matter entitled *Carter v. Bean, et al.*, now proceeding in the United States District Court, District Of Nevada, as case number 2:19-cv-01628-RFB-EJY. It was requested that I provide truthful and accurate information concerning the authentication of certain documents and dental care provided to of inmate Shannon Carter (Mr. Carter), #70773;
2. I am a defendant in this matter.
3. In February 2017, I was employed by the Nevada Department of Corrections (NDOC) as a dental assistant.
4. As a former dental assistant, I have knowledge of the process by which inmates request and receive dental care.
5. My job responsibilities as a dental assistant included set up and break down before and after treatment. I also assisted the dentist during treatment.
6. On February 1, 2017, Mr. Carter presented to the High Desert State Prison dental clinic.
7. At the time Mr. Carter presented, Dr. Paul Bitar and myself were present.
8. I did not review Mr. Carter's dental chart prior to him presenting to the HDSP dental clinic on February 1, 2017.
9. During the February 1, 2017, visit, Mr. Carter stated that he did not have any dental issues and he did not want to be seen for treatment.
10. Instead, Mr. Carter wanted the names of HDSP dental staff who had previously provided him care for a lawsuit.
11. Dr. Bitar informed Mr. Carter that he could not release that information, and Mr. Carter left the HDSP clinic.
12. Mr. Carter was not denied dental treatment on February 1, 2017.
13. During the visit, I never referred to Mr. Carter in a derogatory manner or referenced any lawsuit he had filed against me.
14. As of February 1, 2017, I was unaware Mr. Carter had filed a lawsuit against me, or had attempt to serve me in relation to any lawsuit in which I was a named defendant.

EXHIBIT # 14

EXHIBIT # 14

**OFFICE OF THE SHERIFF
CLARK COUNTY DETENTION
CIVIL PROCESS SECTION**

SHANNON CARTER)

PLAINTIFF)

Vs)

S BEAN - DENTAL ASSISTANT, HDSP)

DEFENDANT)

CASE No. A-16-747779-C
SHERIFF CIVIL NO.: 17000481

AFFIDAVIT OF SERVICE

STATE OF NEVADA }

} ss:

COUNTY OF CLARK }

NICK TOSCANO, being first duly sworn, deposes and says: That he/she is, and was at all times hereinafter mentioned, a duly appointed, qualified and acting Deputy Sheriff in and for the County of Clark, State of Nevada, a citizen of the United States, over the age of twenty-one years and not a party to, nor interested in, the above entitled action; that on 1/31/2017, at the hour of 1:30 PM. affiant as such Deputy Sheriff served a copy/copies of SUMMONS and CIVIL RIGHTS COMPLAINT issued in the above entitled action upon the defendant S BEAN - DENTAL ASSISTANT, HDSP named therein, by delivering to and leaving with Human Resources Administrator KATIE GUTIERREZ for defendant S BEAN - DENTAL ASSISTANT, HDSP at NDOC-ADMIN OFFICE, 3955 W RUSSELL ROAD, LAS VEGAS, NV 89118 within the County of Clark, State of Nevada, said copy/copies of SUMMONS and CIVIL RIGHTS COMPLAINT

Day before visit
Dr Baiter said
didn't know I was
suing dental
under Asth

I, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF THE STATE OF NEVADA THAT THE FOREGOING IS TRUE AND CORRECT.

DATED February 1, 2017.

Joseph M. Lombardo, Sheriff

OWF

By:

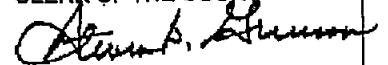
NICK TOSCANO
Deputy Sheriff

Nick Tanc 9559

EXHIBIT # 15

EXHIBIT # 15

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3/25/2019 7:21 AM
Steven D. Grierson
CLERK OF THE COURT



1 TRAN

DISTRICT COURT

2
3 CLARK COUNTY, NEVADA

4 * * * * *

5
6 SHANNON CARTER,

7 Plaintiff,

8 vs.

9 JOHN DOE HDSP DENTIST, DENTIST)

10 MANGAPITT, S. BEAN, JAMES)

11 DZURENDA, STATE OF NEVADA,)

12 Defendants.)

CASE NO. A-16-747779

DEPT. NO. II

Transcript of Proceedings

13 BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE
14 PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND
15 PRELIMINARY INJUNCTION

16 TUESDAY, JULY 11, 2017

17 APPEARANCES:

18 For the Plaintiff: PRO SE

19 For the Defendants: THERESA M. HAAR, ESQ.
BARRACK T. POTTER, ESQ.

20
21 RECORDED BY: DALYNE EASLEY, DISTRICT COURT
22 TRANSCRIBED BY: KRISTEN LUNKWITZ

23 Proceedings recorded by audio-visual recording, transcript
24 produced by transcription service.
25

TABLE OF CONTENTSPAGEWITNESSES:

DR. PAUL BITAR

Direct Examination by Ms. Haar: 9

Cross-Examination by Mr. Carter: 17

Redirect Examination by Ms. Haar: 23

SHANNON CARTER

Q/A with the Court: 5

Cross-Examination by Mr. Potter: 25

1 TUESDAY, JULY 11, 2017 AT 11:47 A.M.

2
3 THE COURT: All right. Let's go to page -- I
4 don't have Carter. All right. Carter -- Shannon Carter
5 versus John Doe HDSP Dentist, A-16-747779. Well, this is a
6 civil matter, which I've put on the -- my criminal stack
7 because I wanted to have the presence of the defendant
8 here. Appearances, please?

9 MS. HAAR: Theresa Harr, 12158, on behalf of
10 defendants.

11 MR. POTTER: Barrack Potter on behalf defendants.

12 THE COURT: All right. Very good. And Mr. Carter
13 -- are you Mr. Carter?

14 MR. CARTER: Yes.

15 THE COURT: All right. Very good. And, so, a
16 couple things. We have a renewed -- I think you did a
17 Renewed Motion to Dismiss. Is that correct?

18 MR. POTTER: I sent it over on OST, Your Honor.

19 It wasn't signed.

20 THE COURT: I didn't have time to sign it. I read
21 it; I didn't have time to sign it. All right. I guess we
22 can -- let's just deal with, then, with the Motion for
23 Temporary Restraining Order, I believe, and there's a
24 preliminary injunction as well.

25 MR. POTTER: That's correct, Your Honor.

1 THE COURT: All right. So, Mr. Carter, I wanted
2 you here to present your argument on why you believe you're
3 not getting the care that you need and why you need the
4 State to step in. So, let me ask you a couple questions
5 here. Because, first of all, it looks like you had -- you
6 had, at one point, three teeth that needed fillings, number
7 18, number 19, and number 31, and you were prescribed pain
8 medication. And, then, one of your fillings was done and
9 you still had two teeth that needed fillings and you
10 complained that you've been in pain. You complained that
11 you've -- your gums have been bleeding, you've lost your
12 ability to eat and sleep, you lost weight, overall health
13 has been decreased, your blood pressure has been high, your
14 teeth are infected, and you still haven't been treated.
15 And because of the problem with your teeth, you've cut your
16 tongue. I see these various allegations of harm here.

17 First of all, what I need to know is have your
18 teeth been fixed yet?

19 MR. CARTER: No, sir.

20 THE COURT: All right. Tell me what's wrong with
21 your teeth.

22 MR. CARTER: I have three infected --

23 THE COURT: Well, let's swear you in in first.
24 So, I'm going to ask you to raise your hand and the Court
25 Clerk will administer an oath so your statements can be

1 taken under oath. This is an evidentiary hearing on your
2 request for preliminary injunction. Go ahead.

3 SHANNON CARTER

4 [having been first duly sworn, testifies as follows:]

5 MR. CARTER: Yes, ma'am.

6 THE COURT: All right. Tell me what's wrong with
7 your teeth.

8 MR. CARTER: Yes, sir. On April of 29th of last
9 year, a High Desert State Prison dentist determined I had
10 three infected teeth in my mouth. It took 117 days to fix
11 the first one and it took about 150 days to fix the second
12 one.

13 THE COURT: All right.

14 MR. CARTER: When I was there, they wanted to
15 extract the teeth and I wanted to have them filled. And I
16 don't think that they liked that. I don't -- for some
17 reason, they didn't want to fill them, they wanted to
18 extract them. But since I insisted on having them filled,
19 they fixed the two and I requested for them to fix the
20 third one, they never fixed it. So, I'm sorry if -- I've
21 been going through a lot of pain. I haven't really slept a
22 lot lately.

23 THE COURT: All right. So, how many teeth remain
24 unfixed at this point?

25 MR. CARTER: One.

1 THE COURT: And is that -- do you have a number
2 for that tooth out of -- do you know which number tooth
3 that is?

4 MR. CARTER: I don't.

5 THE COURT: All right. So --

6 MR. CARTER: I just know it's a back --

7 THE COURT: -- and that tooth, is that tooth
8 presently infected?

9 MR. CARTER: Yes, sir.

10 THE COURT: All right. And is it causing you any
11 discomfort or pain?

12 MR. CARTER: I couldn't -- I haven't slept that
13 good for the last week or two.

14 THE COURT: When -- how long has, you know, the
15 medical staff over there known that that tooth has been
16 infected?

17 MR. CARTER: Since last year of April, Your Honor.

18 THE COURT: What's the reason that they've given
19 you as to why it hasn't been fixed?

20 MR. CARTER: Well, I was sent by the Attorney
21 General's office in February of this year to have it fixed.
22 And when I got up there, they called me crybaby, they
23 threatened me, --

24 THE COURT: All right.

25 MR. CARTER: -- they said that they weren't going

1 to fix my tooth or operate on me. They don't fix teeth for
2 inmates who try to file lawsuits.

3 THE COURT: Okay.

4 MR. CARTER: And, at first, I thought, you know,
5 this has got to be a joke or something. Right? So, then,
6 they were like: Look, if you're not going to drop your
7 lawsuit, we're not going to fix your teeth.

8 THE COURT: Well, so, do you have anything
9 scheduled now to have it fixed?

10 MR. CARTER: No, sir.

11 THE COURT: All right.

12 MR. CARTER: If it wasn't for this court date, I'd
13 still be sitting in the cell going through pain right now.

14 THE COURT: All right. So, let me ask counsel for
15 the State, are there any questions that you would like to
16 ask Mr. Carter? You may ask him any questions now on
17 cross.

18 MR. POTTER: Thank you, Your Honor.

19 THE COURT: And I wasn't direct examining him, I
20 was just trying to help him since he's pro per and
21 eliciting the information that he has in his paperwork.

22 MS. HAAR: We've also brought with us the dentist
23 from High Desert State Prison --

24 THE COURT: Okay.

25 MS. HAAR: -- who is in the hallway and ready to

1 testify if you have questions for him as well.

2 THE COURT: That'll be helpful, too. Thank you.

3 MR. POTTER: Thank you, Your Honor.

4 THE COURT: So -- and you can either examine him
5 now or put the dentist on first. Whatever you'd like to
6 do.

7 MR. POTTER: We're going to put the dentist on
8 first, then call the plaintiff.

9 THE COURT: All right. Why don't you go ahead and
10 have a seat, sir? And we're going to call the dentist to
11 the stand. You may.

12 MS. HAAR: Thank you.

13 THE COURT: Yes, sir. Please -- Thank you,
14 Marshal. I appreciate it. All right. Remain standing.
15 The Court Clerk needs to administer an oath.

16 PAUL BITAR

17 [having been first duly sworn, testifies as follows:]

18 THE WITNESS: I do.

19 THE CLERK: Can you please state and spell the
20 name for the record?

21 THE WITNESS: My name is Dr. Paul Bitar, B-I-T-A-
22 R.

23 THE COURT: Please be seated. And the Court Clerk
24 will -- wants you to spell your name for us. Did you spell
25 the whole thing? I'm sorry.

1 THE WITNESS: Paul, P-A-U-L, Bitar is the last
2 name, B-I-T-A-R.

3 THE COURT: All right. Thank you, Doctor, for
4 being here, appreciate it. Counsel, you may proceed.

5 MS. HAAR: Thank you, Your Honor.

6 DIRECT EXAMINATION OF PAUL BITAR

7 BY MS. HAAR:

8 Q And how are you currently employed, Dr. Bitar?

9 A I'm the Senior Institutional Dentist at High
10 Desert State Prison.

11 Q And how long have you been a dentist with High
12 Desert State Prison?

13 A Almost nine years.

14 Q And let's talk about the process of how we go from
15 an inmate identifying having tooth pain to actually being
16 in your chair. Walk me through that process step-by-step
17 of what that would look like.

18 A Well, typically, they fill out a medical kite.

19 Depending on what the issue is, whether it's medical,
20 dental, or psych, they mark the box, they explain what
21 their issue is, and it gets submitted. Usually, a nurse
22 complies all the kites from the units, brings it to the
23 infirmary, we go through them and, based on the dates of
24 the kites, we schedule them appropriately. Also, it's
25 based on priority a little bit. We do take emergencies and

1 infections a little more seriously than other things like
2 dentures. But, typically, it's done by the date off the
3 kite.

4 Q And how many patients can you see in any given
5 day?

6 A Typically, we see between 15 and 30, depending on
7 the day.

8 Q And how many inmates are incarcerated at High
9 Desert State Prison?

10 A I'm not sure the exact number but it's around
11 3,700, 3,800 inmates.

12 Q And how many inmates a High Desert have dental
13 problems?

14 A Right now, we have at least several hundred kites
15 that need to be addressed.

16 Q So, do you have a timeline for between when an
17 inmate kites to see the dentist and, best case scenario,
18 when you would like to have them seen by?

19 A Typically, within 60 days is what we respond on
20 the kites. So, if they put a kite in, by the time we
21 receive it and respond, it's usually within a couple months
22 of that response.

23 Q And have you had the opportunity to review Mr.
24 Carter's dental chart?

25 A Yes. I have.

1 MS. HAAR: May I approach the witness, Your Honor?

2 THE COURT: Yes.

3 BY MS. HAAR:

4 Q This was Exhibit 1 to the State's Opposition. Do
5 you recognize this, Dr. Bitar?

6 A Yes. I do.

7 Q What do you recognize this to be?

8 A This is the typical dental chart that we all use
9 on every single patient that we have.

10 Q And, all right, let's start from about halfway
11 down. Because, in his preliminary injunction, he states
12 that he started kiting for dental on February 29th, 2016. I
13 -- can you identify for me the first visit after February
14 of 2016?

15 A Well, he was scheduled April 14th, I believe, and
16 there is some unit lockdowns so we rescheduled him to the
17 21st of April.

18 Q And I know it's a really rough copy but can you
19 tell me what -- that April of 2016, what was identified and
20 what was done?

21 A On the 24th?

22 Q Yes, please.

23 A He had an exam of three teeth. They had found
24 occlusal caries, which are just decay on the tops of the
25 teeth, and was scheduled for fillings. He was given a pain

1 pack of ibuprofen and that was about it on that date.

2 Q Is there anything on that entry that identifies an
3 infection?

4 A No.

5 Q Can you read for me the next time that he was seen
6 by dental?

7 A I can't read that date. But, on that day, he had
8 a filling of number 31. It was the largest cavity upon
9 examination, so we decided to do that one first so it
10 didn't proceed into anything worse that would require it to
11 be extracted.

12 THE COURT: I'm sorry. What date was that?

13 THE WITNESS: I can't read that.

14 THE COURT: Of the filling?

15 THE WITNESS: The one after the April 24th -- is
16 that --

17 MS. HAAR: June --

18 THE WITNESS: June 16th.

19 MS. HAAR: June 16th, 2016.

20 THE COURT: Okay.

21 THE WITNESS: He was given anesthetic, they had
22 done the filling, and the next visit was to continue
23 fillings.

24 BY MS. HAAR:

25 Q And, then, was he seen again after the June 2016

1 visit?

2 A He was seen, it looks like September 5th and had
3 another filling on number 19. And same process. And,
4 then, it was noted for his next visit to do number 3.

5 Q And was there any indication that he was suffering
6 from an oral infection at that time?

7 A No.

8 Q And was he scheduled to be seen again for that
9 last --

10 A Yes. He was scheduled for October 6th but there
11 was some kind of emergency recall in the yard. And, then,
12 he was brought in February 1st of this year and that's when
13 I first saw him.

14 Q That was your first interaction with him?

15 A Correct.

16 Q And was he treated at that time?

17 A When he first came in, he said that he had
18 completed all treatment and he didn't know why he was

19 there. And he just proceeded to ask for the names of some
20 of the staff in regards to a lawsuit.

21 Q And if an inmate does not submit a kite to request
22 to be seen by medical and, particularly here, dental, is
23 he's [sic] going to be scheduled to be seen?

24 A If there is no kite, no.

25 Q And, in reviewing his medical file, are you aware

1 of any kites after February of 2017 where he requested
2 dental treatment?

3 A No.

4 MS. HAAR: I have no more questions for this --

5 THE COURT: So, I'm just a little confused. You
6 know, looking at this inmate grievance history, there's a
7 reference, then, on November 18, 2016. I guess that was
8 before you because your first visit was 2-1-17. But this
9 11-18-16 official response from the State says that he
10 still needed fillings on teeth number 18, 19, and 31 and
11 one was done. And that -- I'm assuming that would leave
12 two more that remain to be done. And, so, when do those
13 get done? Because I heard you mention stuff before
14 November 18, 2016. But, see, this entry here talks about
15 three -- you can take a look.

16 MS. HAAR: May I? Thank you.

17 THE COURT: Yeah. Three that still need -- or
18 that were referenced in that November 16th notation. You
19 can show him that, I'm -- I don't have any other writing on
20 that that's important.

21 MS. HAAR: The informal --

22 THE COURT: So, when did those get -- when did
23 those get taken care of?

24 THE WITNESS: Well, two of those three were
25 mentioned --

1 THE COURT: So, it looks like one still needed to
2 be done.

3 THE WITNESS: One is correct. And on that
4 February date, he did not mention he needed anything else.
5 So --

6 THE COURT: So, it was mentioned, I guess, in
7 November but, then, he came back and forgot about it, or it
8 stopped hurting him, or what?

9 THE WITNESS: I have no idea. You'll have to ask
10 him that.

11 THE COURT: Okay. Okay.

12 MS. HAAR: Your Honor, if I may clarify one thing
13 about the grievance report?

14 THE COURT: Yeah.

15 MS. HAAR: The original grievance was submitted in
16 May and they go through an informal, a first level, and a
17 second level grievance.

18 THE COURT: Right.

19 MS. HAAR: So, simply to exhaust the grievance
20 process in order to bring a lawsuit, he would have had to
21 have continued the grievance. The initial grievance --

22 THE COURT: I see.

23 MS. HAAR: -- was in May, which well predated.
24 And, so, even though he's continuing to exhaust his
25 administrative remedies, the original grievance was from

1 May, the informal level was submitted in May.

2 THE COURT: I see. Okay. So, that 11-18 entry is
3 simply just more --

4 MS. HAAR: A follow-up.

5 THE COURT: -- a follow-up. And that other tooth
6 could have been fixed prior to that date.

7 MS. HAAR: Yes, Your Honor.

8 THE COURT: All right. So, I guess your position
9 right now is you're not aware of any present request for
10 filling treatment by this defendant as pending?

11 THE WITNESS: Correct. Except when I read the
12 notes after he had left and we had talked and it was noted
13 that he had that one last filling that was noted in
14 September and that's why he was supposed to be seen in
15 February. I kind of find it odd that he said all treatment
16 was completed.

17 THE COURT: So, there might -- so he might need a
18 filling. So, what would be -- if he were to submit another
19 request to have that looked at, it would be your practice
20 to get it scheduled within the next 60 days?

21 THE WITNESS: Correct.

22 THE COURT: And analyze his condition and need for
23 treatment and schedule him for treatment in due course,
24 then?

25 THE WITNESS: Correct.

1 THE COURT: All right. All right. Very good.
2 Thank you.

3 MS. HAAR: Thank you, Your Honor.

4 THE COURT: I'm going to -- you're going -- I'm
5 going to ask you to stay there.

6 THE WITNESS: Okay.

7 THE COURT: And, now, the plaintiff here, Mr.
8 Carter, has a chance to ask you any questions. Do you want
9 to ask the doctor any questions?

10 MR. CARTER: Yes, sir. I would like to, sir.

11 THE COURT: All right. You may.

12 CROSS-EXAMINATION OF PAUL BITAR

13 BY MR. CARTER:

14 Q Dr. -- what was it again, sir?

15 A Bitar.

16 Q Bitar. Sir, is there anything as a follow-up
17 program that you guys have at dental at High Desert?

18 A A follow-up program?

19 Q Yeah. Follow-up care or a follow-up program for
20 inmates that come up and may need more treatment than, you
21 know, the one day allowed or --

22 A Most inmates require multiple days of treatment,
23 as you are well-aware. We do not have the capacity to
24 create a book of treatment plan and a book of kites. So,
25 we go purely off the kite system.

1 Q Okay. So, there's no follow-up? So, if you
2 determine somebody needs five cavities, so you can't do
3 them all today --

4 A You will re-kite after every visit.

5 Q -- you don't have a follow-up care?

6 A We re-kite after every visit.

7 Q Re-kite. And you said the re-kite takes up to,
8 what, 60 days I think it was?

9 A When the time we receive the kite. Yes.

10 Q About 60 days. So, for somebody going through
11 extreme pain with a tooth, you think 60 days is an adequate
12 time to have them wait?

13 A Well, most people on the outside wait a lot longer
14 than that to see their dentist. So, it's all relative.
15 But your last filling is minor and we have completed the
16 two fillings that were the largest that would cause any
17 particular pain. So, the fact that you have pain
18 currently, I'm -- I don't really see that.

19 Q Okay. Okay. So, a year wait for a teeth that --
20 not you but the other dentist decided needed treatment.
21 That's -- do you believe that's accurate?

22 A A year wait?

23 Q Yeah.

24 A From when?

25 Q Because it was determined on April 29th that it was

1 three infected teeth, which warranted treatment.

2 A They were not infected.

3 Q Okay.

4 A If they're infected, you do not do fillings on
5 infected teeth.

6 Q Excuse me. I apologize. Three teeth that
7 warranted fillings?

8 A Correct.

9 Q So, once they're determined that they need
10 treatment, a year wait, you think, is adequate you're
11 saying?

12 A You haven't waited a year.

13 Q Well, April 29th, 2016 until now is a little over a
14 year.

15 A You've been seen three times.

16 Q Okay. But I was -- I came up on February and you
17 told me that you weren't going to treat me until I dropped
18 my lawsuit. Is that correct?

19 A No. I asked you what your name is to sign in and
20 you were confused as to why you were there because you've
21 had all your treatment completed.

22 Q And, then, you -- and, then, what happened after
23 that? You informed me that the AG's office sent me up
24 there?

25 A I didn't inform you.

1 Q No -- no one informed you of that?

2 A The AG called after you had been seen and I had
3 told them what had happened. And he was confused because
4 you still had a filling to be done, according to your
5 lawsuit.

6 Q Okay. Well, on February 1st, the AG's office sent
7 me up there to get treatment. And I talked --

8 MR. POTTER: Objection, Your Honor.

9 MR. CARTER: I talked to you --

10 THE COURT: Sir, hold on, sir, one second.

11 MR. POTTER: The plaintiff is testifying. Does he
12 have a question?

13 THE COURT: Well, you know what, he is testifying.
14 I'll allow him a little bit of leeway since it's pro per
15 and he's not familiar with court proceedings. And I'll
16 treat this as testimony from him under oath out of order.
17 All right. But let's get to -- this is the time for asking
18 questions, not presenting --

19 MR. CARTER: Okay.

20 THE COURT: -- your statements. Okay?

21 MR. CARTER: Yes, sir. Yeah.

22 THE COURT: So, just stick to questions.

23 BY MR. CARTER:

24 Q Okay. Is there a policy when an inmate is placed
25 on dental sick call to be treated? Is he just allowed to

1 come up and refuse treatment?

2 A You are allowed to refuse treatment.

3 Q Is there anything that goes with that?

4 A Usually, there's a refusal form.

5 Q February, would -- did you have me sign a refusal
6 form, sir?

7 A When you state that there's no treatment left to
8 do, what are you refusing?

9 Q Well, obviously, I was placed on a list -- on the
10 dental sick call list for treatment. Right?

11 A Correct. And, then, when I reviewed a kite that
12 was in January, you had just wanted some names on a civil
13 suit.

14 Q So --

15 A You didn't express anything about a last filling
16 to be done, or any pain, or anything on that kite.

17 Q So, what you're saying is that I was placed on the
18 dental sick call for treatment, I refused, and you told me
19 to go back to my unit?

20 A You didn't refuse. You said there is no treatment
21 to be done.

22 Q Okay.

23 A You can't refuse treatment that's not to be done.

24 MR. CARTER: May I show you this, Your Honor?

25 THE COURT: Yeah. Off -- Marshal? Let me take a

1 look at that.

2 Well, it's a document, you're showing me a
3 document that says: Release of Liability for Refusal of
4 Health Care Treatment. It's blank. It just has an X and
5 is written void on it.

6 MR. CARTER: Yes, Your Honor. I --

7 THE COURT: What did he give -- so, don't testify.
8 You can ask him questions about this.

9 MR. CARTER: Okay. What --

10 THE COURT: Your -- Marshal, give that to the
11 witness.

12 MS. HAAR: May I see it briefly?

13 THE COURT: Yes.

14 MS. HAAR: Thank you.

15 THE COURT: All right?

16 MS. HAAR: Okay. Thank you.

17 THE COURT: You can ask him --

18 MR. CARTER: Okay.

19 THE COURT: -- some questions about it. See if he
20 knows what it is and who wrote that. All right?

21 BY MR. CARTER:

22 Q Down there -- all that is is a form. It's just a
23 form.

24 A Uh-huh.

25 Q I'd like to know if -- it says other. It says

1 dental -- it states other medical needs and it states that
2 if inmates are placed on a dental -- or on medical list,
3 that you're to sign this if you refuse treatment. Correct?

4 A Correct.

5 Q I'd like to know why I didn't sign one of those or
6 why you didn't give me one of those if I refused treatment?

7 A Again, if you came in with a problem, let's say
8 for example that number 3, you want it done, or you wanted
9 it extracted, or I wanted -- I told you that it needed to
10 be extracted and you said, no, I don't want to have it
11 extracted, that is when you sign a refusal form. After
12 I've given you particular options on it -- on how to handle
13 a tooth. When you come in and say that I don't know why
14 I'm here, I've had all my treatment done, then that, to us,
15 sounds like there was a scheduling error. And when I read
16 your kite from January, it mentioned nothing about a tooth,
17 so there's no treatment to refuse.

18 MR. CARTER: Okay. That's all I have for him.

19 THE COURT: All right. Anything follow-up from
20 the State?

21 MS. HAAR: I have very brief follow-up.

22 REDIRECT-EXAMINATION OF PAUL BITAR

23 BY MS. HAAR:

24 Q We've had some discussion on infections versus
25 cavities. How would those be scheduled differently in a

1 priority system?

2 A Infections are a high priority. Typically, when
3 the tooth is -- has extensive decay and it's into the nerve
4 and, then, it causes an infection, it can spread, it can
5 cause cellulitis, those things are more important. So,
6 obviously, we treat those with more higher priority.
7 Cavities, small caries lesions, those typically take years
8 to accrue to the point where the tooth would need to be
9 assessed and treated appropriately.

10 Q And have you reviewed Mr. Carter's X-rays?

11 A Yes. I have.

12 Q And, in reviewing those X-rays, did you find any
13 of the remaining cavity that still needs to be filled?
14 What is its condition?

15 A It is a minor cavity that's had time to be
16 treated. Obviously, the two that were done previous were a
17 little bit larger and that's why those two were taken care
18 of prior.

19 Q And a small cavity of this size, do you expect it
20 to be causing excruciating pain, loss of sleep, inability
21 to eat?

22 A No.

23 MS. HAAR: Thank you. No further questions.

24 THE COURT: All right. Thank you, Doctor. Thank
25 you for your time and you're excused, sir.

1 You didn't have any follow-up. Did you? I didn't

2 --

3 MR. CARTER: No.

4 THE COURT: Okay.

5 MR. CARTER: If I could get that back?

6 THE COURT: You'll get your paperwork back. All
7 right. So, now, let me ask the State if they had any
8 questions. Thank you.

9 MR. POTTER: I do, Your Honor.

10 THE COURT: Any questions for Mr. Carter?

11 CROSS-EXAMINATION OF SHANNON CARTER

12 BY MR. POTTER:

13 Q So, it's your testimony today that on your
14 February 1st, 2017 appointment, dental refused to treat you.
15 Is that correct?

16 A Yes, sir.

17 Q Which is contrary to the testimony that we just
18 heard from the dentist. Is that correct?

19 A Yes, sir.

20 Q Is it also true that you were convicted of
21 statutory sexual seduction, a felony, in October of 2001?

22 A Yes, sir.

23 Q Were you also convicted of kidnapping in that same
24 case in 2001?

25 A Yes, sir.

1 Q Also in 2001, were you convicted of domestic
2 battery, a felony?

3 A Yes, sir.

4 Q Along with that case, were you also convicted of
5 kidnapping, a felony?

6 A Yes, sir.

7 Q Isn't it true that you haven't submitted any kites
8 since January 6, 2017?

9 A January 6th --

10 Q Yes. That's the kite where you said that you
11 wanted dental assistants' names for your civil lawsuit?

12 A Kites?

13 Q Yes. That's correct.

14 A I'm not sure. It may have. It may have.

15 Q Okay.

16 A I'm not positive on that.

17 Q And, so, earlier when you were alleging that you
18 were in excruciating pain in the April time frame before
19 you were seen then, had you not sent multiple kites in to
20 dental --

21 A Yes.

22 Q -- talking about your pain?

23 A Yes.

24 MR. POTTER: Okay. That's all the questions I
25 have, Your Honor.

1 THE COURT: All right. Thank you. So, I
2 appreciate everything from everybody. I'll give you guys
3 each like another thirty seconds to a minute for last word.
4 The State can go first and, then, the plaintiff can go.

5 MS. HAAR: Thank you, Your Honor. For a
6 preliminary injunction, first and foremost, the standard is
7 a likelihood of success on the merits. And, on the merits
8 here of a deliberate indifference claim, it's not even a
9 claim of malpractice or negligence, it's does the dentist
10 know of a serious medical need and, then, has consciously
11 disregarded that need and intentionally and willfully
12 denied medical treatment? And here, quite simply, the
13 medical record shows that every time he kited to dental,
14 requested to be seen, he was in fact seen. The dentist
15 can't force him to have more treatment if he's not
16 requesting treatment to be done.

17 And, so, here, from a deliberate indifference
18 standpoint, the dental department at High Desert has not
19 been deliberately indifferent and therefore the likelihood
20 of success on the merits isn't there and doesn't warrant
21 the issuance of a preliminary injunction.

22 THE COURT: Thanks. Last word from you, sir?

23 MR. CARTER: Your Honor, they've -- High Desert
24 State Prison first knew that I needed dental attention in
25 February 2016. In April of 2016, they determined I needed

1 treatment. I know I might have -- I'm not a dentist so I
2 said an infection but all I know is that they were -- I was
3 in pain. They determined I needed treatment on all three
4 teeth, sir, not one, not two, but three teeth. They
5 treated two of them. I filed multiple grievances, multiple
6 kites, informing them of the pain I was going through and
7 that I needed treatment. On February 1st, I was sent to
8 dental for a dental call sick called in by the AG's office.
9 And I understand that he stated that for some reason he
10 didn't know that I -- what I was there for. But they knew
11 who I were -- who I was, they knew I had filed multiple
12 grievances, they knew I had filed multiple kites
13 complaining about their office, they knew I filed a civil
14 lawsuit, and they knew I was in pain.

15 When I went up there February 1st, I asked for help
16 and I asked for them to treat me and they told me that they
17 would not treat me and they called me a crybaby. They
18 never had me sign a refusal. He's stating that I came up
19 there out of the blue, which we're not allowed to do, you
20 can only get there if you request some kind of medical
21 care. So, they knew I was there in need of some kind of
22 attention. They never treated me.

23 After that, I was scared because they -- I didn't
24 know what to do. Once the AG's office sent me up there to
25 get treated and they didn't treat me, I didn't know what to

1 do.

2 So, a few -- maybe a couple weeks later, or awhile
3 later, I filed a grievance again and I told them about the
4 issue that happened on February 1st, that they wouldn't
5 treat me, and that they called me a crybaby and everything
6 that happened and, then, they just denied my grievance.
7 They didn't send me up to medical to get treated and I have
8 that grievance here where I asked them to help and fix my
9 tooth again and they won't fix it. They won't give me the
10 dental care.

11 He's saying that it's a cavity, I can't -- the
12 other night, I tried to pull it out. It's hurting so bad.
13 I don't know what to do. All I want is to get adequate
14 dental care. That's it. Now I'm scared to death because
15 now if I go back, that's the head dentist right there.
16 Now, I go back to High Desert, I can't go back to his
17 office. And they're going to keep saying that, oh, this
18 crybaby, he got us in court and this and that, and they're
19 not going to fix my teeth. And, then, they got this big
20 old needle that they stick in there. I'm honestly scared,
21 Your Honor.

22 THE COURT: Well, all right.

23 MR. CARTER: That's it.

24 THE COURT: All right. So, in order to obtain a
25 temporary restraining order or preliminary injunction, it's

1 a pretty high burden. You have to meet the initial showing
2 of that you have a probability of success on the merits and
3 you also need to show that there'll be irreparable harm,
4 those are two of the factors.

5 Here, I don't believe that you can prove
6 probability of success on the merits of your claim, which
7 is deliberate indifference to serious medical needs.
8 You've certainly have shown that there's some delay and
9 perhaps, you know, more delay than we would always -- that
10 you didn't -- we would all like to see for medical care or
11 dental care of our inmates. But it doesn't, to me, from
12 the evidence I've seen, doesn't rise to a level of being
13 deliberate indifference to serious medical needs. All
14 right. There's just a lot of people that need to be
15 treated and limited resources. And they see you when they
16 can and I don't believe that there's any bad faith, or
17 recklessness, or indifference by the doctor here and I'm
18 sure when you go back to see him he's not going to

19 retaliate against you. He's going to do -- because he's a
20 professional and he's going to exercise his professional
21 duty of care in treating you. I have no doubt about that.

22 So, I'm denying your Motion. You haven't met the
23 burden. And I suggest that you submit a new kite for
24 further treatment and go in there and he's going to get you
25 still treated -- and reviewed and treated as soon as

1 possible. As for your underlying lawsuit, I'm going to
2 look at the paperwork because there's a pending Motion to
3 Dismiss. I'm going to look at that and I'm going to take
4 it under advisement and decide what to do in about a week
5 or so. Now, if you have any further problems, bring
6 another -- you know how to do the process.

7 Let me tell you, you're quite competent in
8 representing yourself, and presenting yourself, and the
9 paperwork that you filed. Everything that you've done,
10 I'll tell you, you've done a good job and you would have
11 made a good lawyer. All right? So, but anyway, I have to
12 respectfully deny your Motion. But if, you know, refile if
13 something doesn't happen. Okay?

14 MR. CARTER: But, Your Honor, I'm in pain now.

15 THE COURT: Well, and -- that's why when you get
16 back, file a new kite, indicate that you're in serious
17 pain. They'll --

18 MR. CARTER: And he says it takes 60 days.

19 THE COURT: I know. He knows about your
20 situation. I'm sure he'll try to prioritize you in with
21 everybody else. All right. I can't -- I -- look, I have
22 to let NDOC and their staff do their job in administering
23 medical care to the great number of people that they have.
24 All right? It seems like there's not a situation here
25 where you've proven deliberate indifference. So, on that,

1 your Motion will be -- I'm sorry. Your Complaint will be
2 reviewed and I'll decide that in due course. All right?

3 MR. CARTER: Yes, sir. Can I say one more thing?

4 THE COURT: So, thank you. No. I got -- well,
5 one last word.

6 MR. CARTER: As far as the deliberate
7 indifference, sir, one, they know about it --

8 THE COURT: Yeah.

9 MR. CARTER: -- two, they said it needs to be
10 treated and, three, they're not treating it. How much more
11 deliberate indifference do you have to give?

12 THE COURT: Well, because I -- because the
13 evidence that was before me, I found the doctor's testimony
14 to be credible that when you went to see him in February
15 that you didn't mention the two. And I found him credible
16 on that -- in that regard. And, so, he -- if you had told
17 him, I need this tooth fixed, I think he would have fixed
18 it for you. So, do another kite, if it doesn't get fixed,
19 come see me again. All right? Then I'll know there's a
20 problem. All right?

21 MR. CARTER: They're not going to fix it.

22 THE COURT: They're going to fix it if you've got
23 a problem. All right. Thank you.

24 MS. HAAR: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. POTTER: Thank you, Your Honor. I'll draft
2 the Order.
3

4 * * * * *

5 PROCEEDING CONCLUDED AT 12:21 P.M.
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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

Kristen Lunkwitz
KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

EXHIBIT # 16

EXHIBIT # 16

Please Return for my

Records
Case Nu# A-16-747779-C

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
Shannon Carter	70773	8C14	7-16-17

4.) REQUEST FORM TO: (CHECK BOX)

<input type="checkbox"/> CASEWORKER	<input type="checkbox"/> MEDICAL	<input type="checkbox"/> MENTAL HEALTH	<input type="checkbox"/> CANTEEN
<input type="checkbox"/> EDUCATION	<input type="checkbox"/> VISITING	<input type="checkbox"/> LAW LIBRARY	<input type="checkbox"/> DENTAL
<input type="checkbox"/> LAUNDRY	<input type="checkbox"/> PROPERTY ROOM	<input checked="" type="checkbox"/> OTHER <u>Warden</u>	

5.) NAME OF INDIVIDUAL TO CONTACT: B. William Warden

6.) REQUEST: (PRINT BELOW) I would like to personally inform you I am being denied Dental care here at high Desert State Prison, On 7-13-17 I went to court your head dentist was there I informed the court and the dentist I was in Pain and needed to be treated, 4-29-16 (H DSP) dental determined I have (3) teeth that warranted treatment #18 #19 #31, #18 and #19 were treated #31 was not I have informed dental via grievances, civil complaint, Dental sick call, and a court hearing. That I was in pain and need to be treated I am in pain and have been for over a year cant sleep, eat Pain (9) out of (10) Please help.

7.) INMATE SIGNATURE Shannon Carter DOC # 70773

8.) RECEIVING STAFF SIGNATURE _____ DATE _____

9.) RESPONSE TO INMATE

HIGH DESERT STATE PRISON
16 2017

I am in receipt of your letter and medical will be in contact to schedule you an appointment

10.) RESPONDING STAFF SIGNATURE B. William Warden DATE 7-17-17

EXHIBIT # 17

EXHIBIT # 17

Minutes of Proceedings

2:17-cv-01628-RFB-GWF Carter v. Bean et al

United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 10/18/2018 at 8:18 PM PDT and filed on 10/10/2018

Case Name: Carter v. Bean et al

Case Number: 2:17-cv-01628-RFB-GWF

Filer:

Document Number: 33 (No document attached)

Docket Text:

MINUTES OF PROCEEDINGS - Motion Hearing held on 10/10/2018 before the Honorable Richard F. Boulware, II. Crtrm Administrator: *Blanca Lenzi*; Pla Counsel: *Shannon Carter, Pro Se*; Def Counsel: *Matthew Feeley, Deputy A.G., Frank Toddre, Deputy A.G.*; Court Reporter: *Patty Ganci*; Time of Hearing: *12:03 PM - 12:26 PM*; Courtroom: *7C*.

Pro se Plaintiff Shannon Carter is present in custody. The Court makes preliminary statements and hears representations of plaintiff and defense counsel regarding the [11] Motion for Temporary Restraining Order and [12] Motion for Preliminary Injunction.

For the reasons stated on the record at the hearing,

IT IS ORDERED that Plaintiff Shannon Carter's [11] Motion for Temporary Restraining Order is DENIED without prejudice pending the resolution presented by the Defendants. Defense counsel shall make the arrangements to have plaintiff evaluated by a dental professional to address the dental issues that plaintiff has to be addressed within a two week time frame. A notice of compliance shall be filed under seal.

IT IS FURTHER ORDERED that Plaintiff Shannon Carter's [12] Motion for Preliminary Injunction is DENIED without prejudice.

Shannon Carter # 70773
P.O. Box 7007
Carson City N.V. 89702

70773---

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DISTRICT OF NEVADA

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